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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 03 2003

TEP:RA:T1

Uniform Issue List No. 403.00-00

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ATTN: **********
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Legend:
Church = **********
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Governing Body = **********
Organization = **********
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Plan = **********
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City = **********
State = **********

Ladies and Gentlemen:

This is in response to a letter dated February 15, 2001, as supplemented by additional correspondence dated January 29, September 19, October 24, and October 28, 2002; and January 15, May 21, and June 23, 2003, in which your authorized representative requested a private letter ruling on your behalf with respect to an arrangement described in § 403(b)(9) of the Internal Revenue Code ("Code").

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

The Church is a congregationally-based denomination with governing offices located in the City and State named above. Each congregation is an autonomous local unit, and is entitled to send a delegation to participate in the Church's Governing Body, also named above. Each delegation to the Governing Body consists of congregation members, including ordained ministers, pastors, and lay representatives.

By letters dated July 5, 1960, and April 19, 1962, the Internal Revenue Service determined that the Church is an organization described in Code § 501(c)(3), that is exempt from tax under § 501(a). By virtue of the same determination letters, Church agencies, institutions, and congregations listed in the Church's official directory also are exempt. You also represent that the Church is a convention or association of churches within the meaning of Code § 3121(w)(3)(A).

Beginning in ****, the Church established the Plan, a retirement program for the benefit of clerical employees and their beneficiaries, and for certain lay employees and their beneficiaries. The Plan is administered by the Organization, a general agency of the Church, whose mission is to provide retirement and benefit programs to Church clergy, missionaries, lay employees and their families. The "Plan," as referred to in this ruling includes proposed amendments submitted as of the date this ruling is issued.

In fulfilling its mission, the Organization is responsible for the administration of the Plan for the benefit of its own employees, as well as for Church ministers, missionaries, and lay workers of each congregation. The Organization is governed by ten trustees selected by the Church's Governing Body. The Organization's Articles of Incorporation provide that its acts shall, at all times, be subject to the general supervision and control of the Church, and that its acts shall, at all times, be consistent with the general aims and purposes of the Church. The Organization is exempt from tax under Code § 501(c)(3) pursuant to the Church's group exemption letters. The Plan's Trustees, as well as elected or appointed members of other Church agencies and auxiliaries, also serve as representatives to the Church's Governing Body.

In Article II, the Plan provides that five classes of individuals, either employed by or otherwise receiving compensation from the Church (including income earned from self-employment in the performance of a Church ministry), are eligible to participate in the Plan. Those individuals include: (a) ordained ministers of the Church; (b) unordained ministers rendering service to the Church; (c) commissioned home or foreign missionaries; (d) lay workers rendering service to the Church; and (e) subject to the approval of the Organization, an ordained or licensed minister of the Church, described in Code § 414(e)(5)(A), who is serving in the exercise of his or her ministry. Once an individual becomes a Plan participant, he or she remains a Plan "Member" until all accrued benefits have been distributed.

Plan § 1.01 provides that separate accounting is maintained for each Member in the commingled assets of the Plan. Plan §1.05 provides that Members are fully vested in their accounts at all times.

The Plan refers to five types of contributions that may be made on a Plan Member's behalf:

1. Articles III and XIV of the Plan provide that each Member may make pre-tax elective deferrals, but only pursuant to a written salary

reduction agreement. These deferrals are subject to the applicable limits on such Plan contributions as established under Code §§ 402(g), 414(v), and 415(c). Paragraph 14.03 of the Plan provides that elective deferrals apply only to compensation of the participant that becomes currently available after the written agreement is in effect.

2. Article IV states that each Church Congregation is encouraged to contribute, in its discretion, an amount up to 11 percent of a member's Salary.

3. Article V provides that a Congregation may make Plan contributions on behalf of an individual performing missionary work in a foreign country.

4. Article V further provides that a Member may make after-tax voluntary contributions to the Plan, subject to requirements for separate accounting for such voluntary contributions.

5. Sections14.04 and 14.05 of Article XIV provide for the receipt of funds by the Plan, through various types of rollovers or plan-to-plan transfers, from eligible retirement plans or other tax-sheltered annuity (Code § 403(b)) programs, respectively.

Section 14.02(b) of the Plan further provides that, as required by Code § 415, the sum of all contributions under the provisions described above (not including any additional elective contributions described in Code § 414(v) or contributions described in (5) above), may not exceed the limitation on annual additions found in Code § 415(c), or the lesser of $40,000 or 100% of the Member's includible compensation, as defined in Code § 403(b)(3).

Article VII of the Plan provides that Plan retirement distributions may begin after an employee has attained age ** or has ** years of service with the Church. In addition, the Plan provides for distribution of a Member's assets in the event of his or her death, disability, or in the event a Member experiences an immediate and heavy financial need. Section 7.06 of the Plan, as amended, further provides that no Member may withdraw amounts contributed pursuant to a before-tax elective deferral unless the member has attained age 59½, severed employment, died or become disabled, or in the case of hardship as provided under the Plan. Married Members receive retirement distributions in the form of a joint and survivor annuity or joint and survivor annuity with 10 years certain. Any other benefit form requires the prior consent of the nonmember spouse.

Pursuant to Plan § 14.07, a Member's account balance becomes payable beginning no later than April 1 following the later of the calendar year in which the Member retires or

attains age 70½. Under Plan § 14.07, as amended, distributions made after January 1, 2003, will be subject to the minimum distribution requirements of the final Income Tax Regulations under Code § 401(a)(9), that were issued on April 17, 2002.

Section 14.08(b) of the Plan provides for the optional direct rollover of an eligible rollover distribution to another eligible retirement plan. As of January 1, 2002, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of a distributee, except that such distributions do not include any distribution that is one of a series of substantially equal periodic payments made (not less frequently than annually) for the life (or life expectancy) of the distributee or the joint lives (or life expectancies) of the distributee and the distributee's designated beneficiary, or for a period of ten years or more; any distribution that is required under Code § 401(a)(9); any hardship distribution; and any other distribution that is not an eligible rollover distribution under applicable law.

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

1. The Plan constitutes a retirement income program within the meaning of Code § 403(b)(9).

2. Amounts contributed on behalf of a participant to a participant's account under the Plan, including a participant's elective deferrals, will be excluded from the gross income of the participant for the taxable year in which contributed or deferred, to the extent that such amounts do not exceed the limitations Code §§ 402(g), 415(c), and 414(v) for that year; and, for taxable years beginning prior to January 1, 2002, do not exceed the participant's exclusion allowance (as defined in Code § 403(b)(2) as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001) for that year.

Code § 403(b)(1) as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), and generally applicable for years beginning after December 31, 2001, provides, in pertinent part, that amounts contributed by an employer to purchase an annuity contract for an employee (or for a minister described in Code § 414(e)(5)(A)) are excludable from the gross income of the employee or minister in the year contributed, provided: (1) the employee or minister performs services for an organization which is exempt from tax under Code § 501(a) as an organization described in § 501(c)(3); (2) the annuity contract is not subject to section 403(a); (3) the employee's rights under the contract are nonforfeitable except for failure to pay future premiums; (4) except in the case of contract purchased by a church, such contract meets the nondiscrimination requirements of Code § 403(b)(12); and (5) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of Code § 401(a)(30).

For years prior to 2002, Code § 403(b)(1) provided that amounts contributed by an employer to purchase an annuity contract for a plan participant are excludable from the gross income of that participant to the extent of the applicable "exclusion allowance" as defined under Code § 403(b)(2), as then in effect.

Code § 403(b)(1) provides further that amounts actually distributed under an annuity contract is taxable to the recipient in the year distributed as provided in Code § 72.

Code § 403(b)(9) provides that a retirement income account provided by a church shall be treated as an annuity contract described in § 403(b), and amounts paid by an employer described in paragraph (1)(A) to such an account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained. The term "retirement income account," for purposes of this section, means a defined contribution program established or maintained by a church, a convention or association of churches, including an organization described in Code § 414(e)(3)(A) to provide benefits under § 403(b) for an employee described in ¶ (1) thereunder or his beneficiaries.

Code § 401(a)(30) generally provides that a trust is not qualified under § 401(a) unless it limits elective deferrals to the amount of the limitation in effect under § 402(g)(1).

Code § 402(g)(1) provides, generally, that the elective deferrals of any individual for taxable year 2002 shall be included in such individual's gross income to the extent the amount of such deferrals exceeds $11,000. This amount is increased by $1,000 per year for each year through 2006.

Code § 414(v) generally provides for special "catch-up" additional elective deferrals for eligible participants age 50 or over. Code § 414(v)(2) limits the amount of such additional deferrals to an amount greater than the lesser of (i) the applicable dollar amount, or (ii) the excess, if any of the participant's compensation over any other elective deferrals of the participant for such year. The applicable dollar amount is $1,000 in calendar year 2002; that amount increases by $1,000 per year for five years until the applicable dollar amount is $5,000 per year in year 2006 and thereafter.

Code § 403(b)(10) requires that arrangements pursuant to Code § 403(b) must satisfy requirements similar to the requirements of § 401(a)(9) and similar to the incidental death benefit requirements of § 401(a) with respect to benefits accruing after December 31, 1986, in taxable years ending after such date. In addition, this section requires that, for distributions made after December 31, 1992, the requirements of § 401(a)(31) regarding direct rollovers are met.

Code § 401(a)(9), generally, provides that benefits commence by April 1 of the calendar year following the later of the calendar year in which the employee attains 70½, or the calendar year in which the employee retires, and specifies required minimum distribution rules for the payment of benefits from retirement plans.

Code § 403(b)(11) provides, generally, that § 403(b) annuity contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of § 402(g)(3)(C) may be paid only when the employee attains age 59½, severs employment, dies, becomes disabled (within the meaning of § 72(m)), or in the case of hardship. Such a contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

Code § 402(g)(3)(C) provides that the term "elective deferrals" includes, in part, with respect to any taxable year, any employer contribution to purchase an annuity contract under Code § 403(b) under a salary reduction agreement.

Code § 414(u) provides in pertinent part that if any contribution is made by and employer or an employee under an individual account plan, and such a contribution is required by reason of the employee's rights under chapter 43 of title 38 of the United States Code, resulting from qualified military service, then the contribution is not subject to any otherwise applicable limitation under §§ 403(b), 415, 402(g), or 414(v).

Code § 415(c)(1) limits annual additions to a participant's account to the lesser of $40,000 or 100 percent of the participant's compensation. Code § 415 (c)(3)(E) provides that, for purposes of ¶ 1, in the case of an annuity contract described in section 403(b), the term "participant's compensation" means the participant's includible compensation determined under § 403(b)(3).

Code § 403(b)(3) generally defines "includible compensation" to mean the amount of compensation received from an employer described in Code § 403(b)(1)(A), that is includible in gross income for the most recent one-year period of service.

Part IV(d)(4) of the General Explanation of the Tax Equity and Fiscal Responsibility Act of 1982 (the "Act") contains, in pertinent part, the following information regarding investments made by or on behalf of participants, for whom contributions are made into a retirement income account as described in Code § 403(b)(9):

> The Act also provides that generally the tax rules relating to tax-sheltered contracts apply to retirement income accounts provided by a church for its employees. Under the Act, a retirement income account means a program which is a defined contribution plan (sec. 414(i)) and which is established or maintained by a church to provide retirement benefits for its employees under the tax-sheltered annuity rules. Thus, a church maintained retirement income account differs from a tax-sheltered annuity only in that the account is not maintained by an insurance company. . . .
>
> The assets of a church-maintained retirement income account for the benefit of an employee or his beneficiaries may be commingled in a common trust fund made up of such accounts. However, that part of the common fund which equitably belongs to any account must be separately

accounted for (i.e., it must be possible at all times to determine the account's interest in the fund) and cannot be used for, or diverted to, any purposes other than the exclusive benefit of such employee and beneficiaries. Provided these requirements are met, the assets of a retirement income account also may be commingled with the assets of a tax-qualified plan without adversely affecting the status of the account or the qualification of the plan.

In this case you represent that Plan funds are commingled. However, it is also represented that the funds of each participant are separately accounted for. You further represent that the Church is an organization described in Code § 501(c)(3), and that it has established the Plan for the benefit of its employees and certain other individuals rendering service to the Church or to one of its individual congregations. All contributions and the earnings thereon are fully vested at all times, and the Plan does not meet the requirements of an annuity contract under Code § 403(a).

The Plan also satisfies the requirements of Code § 403(b)(11) that amounts attributable to elective deferrals shall not be distributable earlier than upon the attainment of age 59½, severance from employment, death, disability, or hardship. In addition, the Plan satisfies Code § 403(b)(10) requirements and limits contributions in accordance with §§ 402(g), 415(c), and 414(v). Finally, the Plan imposes all the requirements of Code § 401(a)(9) relating to commencement of Plan distributions after retirement and the minimum required amounts of such distributions.

Accordingly, we rule that:

1. The Plan constitutes a retirement income program within the meaning of Code § 403(b)(9).

2. Amounts contributed on behalf of a participant to a participant's account under the Plan, including a participant's elective deferrals, will be excluded from the gross income of the participant for the taxable year in which contributed or deferred, to the extent that such amounts do not exceed the limitations Code §§ 402(g), 415(c), and 414(v) for that year, and, for taxable years beginning prior to January 1, 2002, do not exceed the participant's exclusion allowance (as defined in Code § 403(b)(2) as in effect before the enactment of EGTRRA for that year.

This ruling is limited to the form of the Plan as amended, including amendments proposed as of the date of this ruling and contingent on their timely adoption. This ruling does not extend to any operational violations of section 403(b) by the Plan, now or in the future.

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

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office. Any questions regarding this ruling should be addressed to ********** at **********.

Sincerely,

Donzel Littlejohn, Acting Manager
Employee Plans Technical Group 1

Enclosures:

- Deleted Copy of this Letter
- Notice of Intention to Disclose, Notice 437
- Copy of Notification Letter (Form 1155) to Authorized Representative