200350020

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List Nos.: 414.08-00, 410.00-00, 414.06-00

T:EP:RA:T1

Attn:

SEP 17 2003

Church K.....

Corporation A.....

Corporation B.....

State M.....

Plan N.....

Plan O..... .

Dear :

This is in response to a letter dated August 10, 2001, as supplemented by correspondence dated May 19, 2003, and July 28, 2003, in which your authorized representative requested a ruling 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.

Corporation A is a not for profit corporation organized under the laws of State M. Corporation A was established for the purpose of providing administrative and management assistance to certain hospitals, supporting community health in State M, and benefitting and assisting certain health organizations, which are affiliated with Church K. These organizations include five hospitals ("Hospitals"), each of which is a not for profit organization under State M law that is affiliated with Church K.

Corporation A established Plan N effective January 1, 2001. Plan N is a defined benefit plan intended to be qualified under Code section 401(a) and is a church plan under section 414(e) that has not made an election under section 410(d). Plan N is designed to provide uniform pension benefits to eligible employees of the Hospitals and other affiliated organizations, which will ease the task of administering pension benefits to

employees of the Hospitals and will facilitate the transfer of employees among the Hospitals in accordance with Corporation A's goal of bringing integrated management to the Hospitals and achieving economies of scale. Each of the Hospitals maintained its own defined benefit plan or the Hospital participated in a defined benefit plan of another organization affiliated with Church K (collectively, the "Plans"). Except for Plan O maintained by one of the Hospitals, Corporation B, none of the other Hospitals made an election under Code section 410(d). You represent that all of the Plans are qualified under section 401(a) and that each of the Plans is a church plan within the meaning of section 414(e).

Effective January 1, 2001, each of the Plans merged into Plan N, with the exception of Plan O, which will be merged if and when the requested ruling is issued by the Internal Revenue Service. The merger of Plan O into Plan N will satisfy Plan O's and Plan N's provisions. Section 5.4.2 of Schedule 5 of Plan N provides that effective on and after the merger of Plan O into Plan N, Plan N shall be responsible for the payment of all benefits accrued under Plan O, including all such benefits in pay status on the effective date of the merger. Section 13.5 of Plan N provides that in the case of a merger of another qualified plan into Plan N, each participant (including participants who had their benefits transferred to Plan N in connection with the merger) shall be entitled to a benefit immediately after the merger equal to or greater than the benefit the participant would have received if Plan N and the other plan had been terminated immediately prior to the merger, and shall further be entitled to each optional form of benefit and any other benefit protected under Code section 411(d)(6) to which the participant was entitled immediately prior to the merger.

Section 10.02 of Plan O provides that it shall not be merged with any other plan unless each participant in Plan O would receive a benefit immediately after the merger (if the plan then terminated) which is equal to or greater than the benefit the participant would have been entitled to receive immediately before the merger (if Plan O then terminated).

Section 10.1(c) of Plan N provides that no amendment shall be made that would deprive a participant of any benefit under Plan N to which he would have been entitled if the participant's employment were terminated immediately prior to the effective date of the amendment. Pursuant to sections 1.3 and Article 14 of Plan N, a benefit under Plan N includes the benefits accrued under Plan O.

Based on the above facts and representations, you request a ruling that the status of Plan N as a non-electing church plan under Code section 410(d) will not be adversely affected by the merger of Plan O into Plan N.

Code section 414(e)(1) defines a "church plan," in part, as a plan established and maintained by a church or by a convention or association of churches for its employees.

Section 1.414(e)-1(a) of the federal Income Tax Regulations adds that a church plan

a "plan established and at all times maintained for its employees by a church or by a convention or association of churches" and that "[i]f at any time during its existence a plan is not a church plan because of a failure to meet the requirements set forth in this section, it cannot thereafter become a church plan."

The Code provides that a church plan is either not subject to various qualification requirements generally applicable to qualified plans or it is subject to qualification requirements that pre-date the enactment of the Employee Retirement Income Security Act of 1974 (ERISA). For example, the flush language of section 401(a) provides that paragraphs (11), (12), (13), (14), (15), (19), and (20) of section 401(a) do not apply to non-electing church plans. Thus, requirements relating to joint and survivor annuities, plan mergers, anti-alienation and others generally do not apply to church plans. Similarly, section 4975(g)(3) provides that church plans are generally not subject to the prohibited transaction rules under section 4975. In other areas, pre-ERISA requirements apply such as the minimum vesting and participation rules applicable to qualified plans prior to the enactment of ERISA rather than the stricter rules currently applicable to qualified plans under section 410.

Code section 410(d) provides that if a church or convention or association of churches which maintains any church plan makes an election under this subsection, then the provisions of this title relating to participation, vesting, funding, etc., shall apply to such church plan as if such provisions did not contain an exclusion for church plans. This section further provides that such an election is binding with respect to the plan, and once made is irrevocable. Section 1.410(d)-1(b) of the regulations provides that an election under Code section 410(d) with respect to any church plan shall be binding and irrevocable with respect to such plan.

Similarly, church plans are generally not subject to the provisions of Titles I and IV of ERISA. See Section 4(b) of ERISA, 29 U.S.C. section 1003(b). Thus, for most church plans the various rules of Title I regarding reporting, disclosure, vesting, participation, funding, fiduciary responsibility, and enforcement (including preemption) do not apply. A parallel provision is found in section 4021 of ERISA, 29 U.S.C. section 1321, with regard to Title IV of ERISA. Titles I and IV also provide church plans with the election not to be treated as a church plan for purposes of those Titles.

In this case, Corporation A proposes to merge Plan O, an electing church plan, into Plan N, a non-electing church plan. Plan O and Plan N each have provisions that would protect accrued benefits in the case of a merger of Plan O into Plan N. However, Plan O is subject to the full array of rules applicable to qualified plans under the Code and Titles I and IV of ERISA. These rules include participation, vesting, funding, reporting, disclosure and fiduciary requirements, enforcement of participants' rights, in addition to the protection of accrued benefits. Further, the election made by Plan O "once made, shall be irrevocable." The prohibition against a revocation of the 410(d) election applies to Plan O as a whole and not just to the benefits accrued. Any transaction that serves to revoke the 410(d) election, directly or indirectly, violates the

requirement of irrevocability. Subsequent to the proposed merger of Plan O into Plan N, Corporation A intends that the merged plan will be treated as a non-electing church plan. Because a portion of the merged plan would be attributable to Plan O, however, Plan O's election would be effectively revoked by the merger in violation of section 410(d). Thus, we conclude that the status of the merged plan, Plan N, as a non-electing church plan would be adversely affected by a merger of Plan O into Plan N.

This letter expresses no opinion as to whether the above plans satisfy the requirements for qualification under Code section 401(a) or constitute church plans under section 414(e). The determination as to whether a plan is qualified under section 401(a) is within the jurisdiction of the Employee Plans Area Manager, Area.

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

The original of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office. Should you have any questions or concerns, please contact .

Sincerely yours,

Donzell H. Littlejohn

Donzell H. Littlejohn, Acting Manager
Employee Plans Technical Group 1

cc:

Enclosures:
Copy of deleted letter
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