199937052

Internal Revenue Service

Department of the Treasury

Uniform Issue List: 403.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:
OP:E:EP:T:3

Date:
JUN 24 1999

Attn:

Legend:

Employer M =

Church P =

Plan X =

Plan Y =

Dear

This is in response to a ruling request dated September 2, 1998, as supplemented by letters dated January 15, 1999, April 19, 1999, and May 6, 1999, submitted on your behalf by your authorized representative, with respect to an arrangement described under section 403(b)(9) of the Internal Revenue Code.

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

Employer M is an organization described in section 501(c)(3) of the Code. Employer M established Plan X and Plan Y for the benefit of the employees of Employer M. Employer M is organized under the auspices of Church P and follows the teachings, tenets, and ecclesiastical laws of Church P.

Plan X permits employees to enter into salary reduction agreements to make contributions on a pre-tax basis to a retirement income account as defined in section 403(b)(9) of the Code. The assets of Plan X will be commingled with the assets of Plan Y. Plan Y is a defined benefit plan that is qualified under section 401(a) of the Code. The assets of Plan X will be separately accounted for and will be used only for the exclusive benefit of the participants and beneficiaries of Plan X. Also, assets of Plan Y will be separately accounted for and used only for the exclusive benefit of participants and beneficiaries of Plan Y. Both Plan X and Plan Y are considered church plans under section 414(e).

Two types of contributions may be made to Plan X on behalf of a participant. The two are: salary reduction contributions under section 4.01 of Plan X, and rollover contributions in accordance with section 403(b)(10) of the Code, pursuant to section 4.06 of Plan X. Under section 4.01 of Plan X, salary reduction contributions are limited to the lesser of the maximum exclusion allowance in accordance with section 403(b)(2) of the Code, or the limitations under section 415(c), or an amount no greater than permitted under section 402(g).

Pursuant to sections 6.01, 6.03, and 6.04 of Plan X, distributions may be made only upon death, disability, termination of employment, attainment of age 59 ½, the attainment of the Plan's latest distribution date, or financial hardship.

All contributions under Plan X are limited to the amount of the exclusion allowance as set forth under section 403(b)(2) of the Code. Under sections 2.01 and 5.01 of Plan X, the trustee shall value the elective deferral accounts four times each year.

Under section 3.03 of Plan X, all amounts allocated to a participant's account pursuant to the salary reduction agreement shall be nonforfeitable at all times.

Under section 6.05 of Plan X, distributions are made in accordance with section 401(a)(9) of the Code including the minimum distribution incidental benefit requirements of section 1.401(a)(9)-2 of the proposed Income Tax Regulations. Section 6.03 of Plan X further provides that the required beginning date means the latest of when the participant attains age 65; the tenth anniversary of the date on which the participant commenced participation in Plan X; or the participant terminates service with Employer M.

Section 6.07 of Plan X provides that a distributee receiving an eligible rollover distribution under the Plan may elect to have the distribution rolled over in a direct rollover to an eligible retirement plan.

Based upon the foregoing facts and representations, you request the following rulings:

1. Plan X satisfies the requirements of section 403(b)(9) of the Code and constitutes a retirement income account established or maintained by a church to provide benefits under section 403(b) for eligible employees and beneficiaries.

2. Participant contributions to Plan X made pursuant to a salary reduction agreement between a participant and Employer M, and any earnings thereon, will not be taxable to the

participant when contributed to Plan X, to the extent that the contributions do not exceed the participant's exclusion allowance for such taxable year as provided in section 403(b)(2) of the Code, but rather, will be taxable to the participant only for the taxable year in which such amounts are received by the participant.

Section 403(b)(1) of the Code provides, in part, that amounts contributed by an employer to purchase an annuity contract for an employee are excludable from the gross income of the employee in the year contributed to the extent of the applicable "exclusion allowance", provided (1) the employee performs services for an employer which is exempt from tax under section 501(a) of the Code as an organization described in section 501(c)(3), or the employee performs services for an educational institution (as defined in section 170(b)(1)(A)(ii) of the Code) which is a state, a political subdivision of a state, or an agency or instrumentality of any one or more of the foregoing; (2) the annuity contract is not subject to section 403(a) of the Code; (3) the employee's rights under the contract are nonforfeitable except for failure to pay future premiums; (4) such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), except in the case of a contract purchased by a church; and, (5) in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30).

Section 403(b)(1) of the Code provides further that the employee shall include in his gross income the amounts actually distributed under such contract in the year distributed as provided in section 72 of the Code.

Section 403(b)(9) of the Code provides that a retirement income account provided by a church shall be treated as an annuity contract described in section 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 section 414(e)(3)(A) to provide benefits under section 403(b) for an employee described in paragraph (1) thereunder or his beneficiaries.

Section 403(b)(10) of the Code requires that arrangements pursuant to section 403(b) of the Code must satisfy requirements similar to the requirements of section 401(a)(9) and similar to the incidental death benefit requirements of section 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 section 401(a)(31) regarding direct rollovers are met.

Section 401(a)(9) of the Code, generally, provides that benefits commence by April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 ½, or the calendar year in which the employee retires, and specifies required minimum distribution rules for the payment of benefits from retirement plans.

Section 403(b)(11) of the Code provides, generally, that section 403(b) annuity contract distributions attributable to contributions made pursuant to a salary reduction agreement

(within the meaning of section 402(g)(3)(C)) may be paid only when the employee attains age 59 1/2, separates from service, dies, becomes disabled (within the meaning of section 72(m)(7)), or in the case of hardship. Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

Section 403(b)(1)(E) of the Code provides that in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan must meet the requirements of section 401(a)(30). Section 401(a)(30) requires a section 403(b) arrangement, which provides for elective deferrals, to limit such deferrals under the arrangement, in combination with any other qualified plans or arrangements, of an employer maintaining such plan, providing for elective deferrals, to the limitation in effect under section 402(g)(1) for taxable years beginning in such calendar year.

Section 402(g)(1) of the Code provides, generally, that the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals exceeds $7,000.

Section 402(g)(4) of the Code provides that the limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500 ($10,000 for years after December 31, 1997)) by the amount of any employer contributions for the taxable year described in section 402(g)(3)(C).

Section 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 section 403(b) under a salary reduction agreement.

Section 415(a)(2) of the Code provides, in relevant part, that an annuity contract described in section 403(b) shall not be considered described in section 403(b), unless it satisfies the section 415 limitations. In the case of an annuity contract described in section 403(b), the preceding sentence applies only to the portion of the annuity contract exceeding the section 415 limitations and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2).

Part IV (d)(4) of the General Explanation of the Tax Equity and Fiscal Responsibility Act of 1982 ("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 section 403(b)(9) of the Code:

> 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 the funds of Plan X and Plan Y will be commingled. However, it is also represented that the funds of Plan X and Plan Y will be separately accounted for and used only for the exclusive benefit of the participants and beneficiaries of the respective Plans.

In this case, you represent that Employer M, an employer described in section 501(c)(3) of the Code, has established Plan X as its section 403(b) program for its employees. All contributions and the earnings thereon are fully vested and nonforfeitable at all times. Plan X does not meet the requirements of a section 403(a) annuity contract.

Plan X satisfies the limits, under section 403(b)(11) of the Code, that amounts attributable to elective deferrals shall not be distributable earlier than upon the attainment of age 59 ½, separation from service, death, disability, or hardship. In addition, Plan X satisfies the section 403(b)(10) requirements and limits contributions in accordance with sections 403(b)(2) and 415 of the Code.

Accordingly, based on the foregoing law and facts, we conclude with respect to your first ruling request that Plan X satisfies the requirements of section 403(b)(9) of the Code and constitutes a retirement income account established or maintained by a church to provide benefits under section 403(b) for eligible employees and beneficiaries. We also conclude, with respect to your second ruling request, that participant contributions to Plan X made pursuant to a salary reduction agreement between a participant and Employer M, and any earnings thereon, will not be taxable to the participant when contributed to Plan X, to the extent that the contributions do not exceed the participant's exclusion allowance for such taxable year as provided in section 403(b)(2) of the Code, but rather, will be taxable to the participant only for the taxable year in which such amounts are received by the participant.

This ruling is contingent upon the adoption of the amendments to Plan X, as stipulated in your correspondence dated April 19, 1999, and May 6, 1999, and will have no effect unless such proposed amendments are adopted. This ruling is also contingent on the funds of Plan X and Plan Y being separately accounted for and each used for the exclusive benefit of the participants and beneficiaries of the respective Plans.

This ruling is limited to the form of Plan X as amended, excluding any form defects that may violate the nondiscrimination requirements of section 403(b)(12) of the Code. This ruling does not extend to any operational violations of section 403(b) by Plan X, now or in the future.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee
Plans Technical Branch 3

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose

CC: