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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 10 2005

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Uniform Issue List: 414.08-00, 4980B.01-00

Attn:

SE:T:EP:RA:T1

Legend:

Organization A.....

Organization B.....

Organization C.....

Plan S.....

Plan T.....

Plan U.....

Plan V.....

Plan W .....

Plan X.....

State M.....

Church A.....

Synod B.....

Dear :

This is in response to a request for a ruling submitted on your behalf by your authorized representative dated August 12, 2003, as supplemented by correspondence dated June 28, 2004, July 27, 2004, July 28, 2004, October 5, 2004, October 28, 2004, November 29, 2004, December 2, 2004, and December 22, 2004 under sections 414(e) and 4980B(d)(3) of the Internal Revenue Code (the "Code"). The following facts and representations were submitted in connection with your request.

Organization A is a not for profit, non-stock corporation established under the laws of State M on [redacted] Organization A provides direct care services to persons with developmental disabilities. Previously, on [redacted] Church A voted to reorganize Organization B and Organization C by creating Organization A and approving

Organization A's Articles of Incorporation and its Bylaws. Effective [redacted] pursuant to this reorganization, all of the employees of Organizations B and C were transferred to Organization A. Organizations B and C remain as shell corporations with no employees. Organizations A, B and C are organizations described in Code section 501(c)(3) and exempt from tax under section 501(a).

Article II, Section 3 of Organization A's Bylaws provides that Church A shall appoint three members of Organization A's Board of Directors, and at least seven members of its Board of Directors shall be members of Church A or Synod B. The maximum number of directors on Organization A's Board of Directors is 13 directors. Article V, Section 1 of the Bylaws provides that no amendment may be made to any section of the Bylaws limited by Organization A's Articles of Incorporation, Sections 3, 4, 6 and 7 of Article II, and Article V, Section 1 of the Bylaws, without the consent of Church A. Section 10 of Organization A's Articles of Incorporation provides that it is intended to be affiliated with Church A and recognized by Synod B. Section 8 of its Articles of Incorporation provides that on the dissolution of Organization A, after payment of liabilities, its Board of Directors will distribute any remaining assets to one or more social ministry organizations affiliated with Church A. Section 11 provides that no amendment to Sections 8, 10, and 11 of the Articles of Incorporation may be made without the prior written consent of Church A. Because Organization A has a majority of Church A members on its Board of Directors, it is considered to be affiliated with Church A pursuant to Church A's written principles regarding affiliation. Organization A has no members.

Organization A maintains Plan S which is a plan intended to be described under Code section 403(b)(9). Plan S was previously maintained by Organization B for its employees. On [redacted] the Internal Revenue Service issued a private letter ruling to Organization B concluding that Plan S was a plan described under Code section 403(b)(9). Following the reorganization described above when the employees of Organizations B and C were transferred to Organization A, Organization A adopted Plan S effective [redacted] Plan S currently covers only employees of Organization A, including the prior employees of Organization B and Organization C.

Organization A also maintains Plans U and V, which are health care (medical and vision) plans for its employees. Prior to [redacted] Organization B maintained Plan T as a health care (medical and vision) plan for its employees. On [redacted] Organization A adopted and maintained Plan T for its employees until [redacted] at which time Plan T was amended by Organization A to become Plan U and Plan V. Plan W is a dental plan previously maintained by Organization B and adopted by Organization A on [redacted] for its employees. Plan X, effective on [redacted] is also maintained by Organization A and is an amendment to Plan T.

Plan S, as restated by Organization B effective [redacted] provides in Section 2.2 that the Sponsoring Employer shall appoint one or more Administrators. The second paragraph of Section 2.2 provides that upon resignation or removal of an Administrator, the Sponsoring Employer will designate a successor to this position, however, if it fails to do so, the Sponsoring Employer will function as the Administrator. Under Section 2.4 of Plan S, the principal purpose or function of the Administrator is to administer Plan S. You propose to

amend Plan S to delete the second sentence in the second paragraph of Section 2.2 providing that in the event an Administrator is not appointed, administration of Plan S will default to the Sponsoring Employer. Organization A appointed an Administrator for Plan S whose principal purpose and function is to administer Plan S (as well as the other plans of Organization A) and who has administered Plan S since [redacted] its adoption date by Organization A. Responsibility for plan administration has never defaulted to Organization A in operation.

The documents for Plan T and Plan W, effective [redacted] provided that Organization B's Board of Directors appoint a benefits committee the principal purpose or function of which was to administer these plans. When Plan T and Plan W were adopted by Organization A effective [redacted] and subsequently when Plan T was amended by Organization A and became Plan U, Plan V and Plan X, Organization A appointed an Administrator the principal purpose or function of which is to administer these Plans.

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

(1) Plan X is a church plan effective [redacted] and effective [redacted] Plan S, Plans U and V (f/k/a Plan T), and Plan W are church plans, within the meaning of Code section 414(e); and

(2) Plans U, V, W and X are exempt from the participant and beneficiary notification requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") because they are church plans within the meaning of Code section 4980B(d)(3).

Regarding ruling request (1), to qualify under Code section 401(a), an employees' plan must meet certain requirements, including the minimum participation rules under section 410 and the minimum vesting requirements under section 411. A church plan described in section 414(e), however, is excepted from these requirements unless an election is made in accordance with section 410(d) to have such requirements apply. Where no election is made under section 410(d), a church plan described in section 414(e) shall be treated as a qualified plan for purposes of section 401(a) if such plan meets the participation, vesting and funding requirements of the Code as in effect on September 1, 1974.

Code section 414(e) 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.

Code section 414(e)(2) provides that the term "church plan" does not include a plan (A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of a church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses or, (B) if less than substantially all of the individuals included in the plan are church employees (as described in section 414(e)(1) or 414(e)(3)(B)).

Code section 414(e)(3)(A) provides that a plan will be treated as a church plan if it is 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.

Code section 414(e)(3)(B) provides that an employee of a church or 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, and which is controlled by or associated with a church or a convention or association of churches.

Code section 414(e)(3)(C) 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).

Code section 414(e)(3)(D) 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.

Code 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. Section 414(e)(4)(C) provides 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.

In order for an organization that is not itself a church or convention or association of churches to have a church plan under Code section 414(e), that organization must establish that its employees are employees or deemed employees of a church or convention or association of churches under section 414(e)(3)(B). Employees of such an organization maintaining a plan are considered to be a church employee if the organization: (1) is exempt from tax under section 501, (2) is controlled by or associated with a church or convention or association of churches, and (3) provides for administration or funding of the plan by an organization described in section 414(e)(3)(A).

In this case, Organization A is exempt from tax under Code section 501(a). The participants in the Plans (Plans S, U, V, W and X) are employees of Organization A, and Organization A is closely linked with Church A and Synod B, a regional subdivision of Church A composed of Church A congregations. Organization A's Bylaws require that at least a majority of Organization A's Board of Directors be members of Church A or Synod B, and these provisions cannot be amended without the consent of Church A. Section 10 of Organization A's Articles of Incorporation provides that Organization A is intended to be affiliated with Church A and Synod B. On dissolution, all of Organization A's remaining assets will be distributed to Church A.

Church A approved the creation of Organization A. It has been represented that Organization A is an affiliated social ministry organization of Church A and a recognized service organization of Synod B. The terms "affiliation" and "recognition" are synonymous with respect to social ministry organizations such as Organization A. A requirement for affiliation and recognition, which has been met by Organization A, is that at least a majority of its Board of Directors must be members of Church A or Synod B. By virtue of affiliation and recognition, Organization A is considered an organization integral to Church A and Synod B that shares in the mission, ministry, and stewardship of Church A and Synod B.

For these reasons, we conclude that Organization A is associated with Church A under the church plan rules. Organization A is associated with Church A, within the meaning of Code section 414(e)(3)(D), because it shares common religious bonds and convictions with Church A. Accordingly, because the employees of Organization A are employed by an organization that is exempt from tax under Code section 501(a) and associated with a church or convention or association of churches (i.e., Church A) these employees are deemed to be Church A employees under section 414(e)(3)(B). Conversely, Church A is considered to be the employer of the employees of Organization A under section 414(e)(3)(C). Further, the [redacted] private letter ruling concluded that Plan S, as maintained by Organization B for its employees, was a plan described in section 403(b)(9), and in order to be such a plan, the plan must be a church plan as defined within the meaning of section 414(e).

In addition, the Board of Directors of Organization A appointed an administrative committee ("Administrator") for the Plans whose principal purpose and function is to administer the Plans. This Administrator has administered Plans S, T and W since [redacted] their adoption date by Organization A; Plans U and V (f/k/a Plan T) since [redacted] their adoption date by Organization A; and Plan X since [redacted] Since [redacted] the effective date of Plans T and W as established by Organization B, and until [redacted] Plans T and W also had an administrative committee, appointed by the Board of Directors of Organization B, the principal purpose and function of which was to administer these plans. As indicated above in the [redacted] letter ruling, in ruling that Plan S as maintained by Organization B was an annuity plan under Code section 403(b)(9), the Service found that Organization B's administrative committee was controlled by or associated with a church or convention or association of churches. Because Organization A is associated with Church A and Synod B within the meaning of Code section 414(e)(3)(D) and the Administrator of Plans S, U, V, W and X is appointed by the Board of Directors of Organization A, the Administrator of these Plans is considered to be associated with or controlled by a church or a convention or association of churches within the meaning of section 414(e)(3)(A). You propose to amend Plan S to delete the language that would enable Organization A to administer Plan S should it fail to appoint a Plan administrator. The proposed amendment contained in the correspondence dated [redacted] will correct a failure to meet one of the church plan requirements of Code section 414(e). Once corrected, Plan S will be deemed to meet the requirements of Code section 414(e) for the year in which the correction was made and for all prior years retroactive to [redacted] in accordance with section 414(e)(4). Accordingly, we conclude that, with respect to ruling request (1), Plan X is a church plan effective [redacted] and effective [redacted] Plan S, Plans U and V (f/k/a Plan T), and Plan W are church plans, within the meaning of Code section 414(e).

Regarding ruling request (2), Code section 4980B(a) imposes a tax on the failure of a group health plan to meet the requirements of subsection (f) (pertaining to continuation coverage requirements of group health plans).

Code section 4980B(d)(3) provides that section 4980B does not apply to any church plan within the meaning of section 414(e).

Since we concluded in ruling request (1) that Plans U, V, W and X are church plans under Code section 414(e), we conclude with respect to ruling request (2) that Plans U, V, W and X are exempt from the requirements of section 4980B.

With respect to Plan S, this ruling takes effect on the adoption of the proposed amendment to Plan S as described above. This letter expresses no opinion as to whether Plan S satisfies the requirements of Code section 403(b)(9).

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 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 or concerns, please contact .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Notice 437
Copy of deleted ruling

CC: