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FEB 6 2004

**Uniform Issue List: 414.00-00**

*T: EP: RA: TB*

Attention:

LEGEND:

Employer M =

Church A =

Convention B =

State C =

Tenet D =

Plan V =

Plan W =

Plan X =

Plan Y =

Plan Z =

Committee N =

Dear

This is in response to correspondence dated June 26, 2003, as supplemented by correspondence dated October 3, 2003, submitted on your behalf by your authorized representative in which you request a letter ruling under section 414(e) of the Internal Revenue Code.

The following facts and representations support your ruling request.

In the \_\_\_\_\_s, Church A missionaries came to State C on assignment from the Church A Convention Foreign Mission Board and together with local churches formed Convention B. Convention B subsequently recognized a need for a Church A school in State C and thus set up a committee to promote the founding of such a school. Funding to build the school originated through the Church A Convention Foreign Mission Board and mission offerings, primarily from members of Church A. In 1949, the predecessor to Employer M opened. From \_\_\_\_\_ to \_\_\_\_\_, the Church A Convention Foreign Mission Board controlled and supported the predecessor to Employer M both financially and operationally. In \_\_\_\_\_, the Church A Convention Foreign Mission Board transferred control of the predecessor of Employer M to Convention B.

In \_\_\_\_\_, the Executive Board of Convention B moved to incorporate Employer M as a separate entity. In November \_\_\_\_\_ Employer M was incorporated as a nonprofit school under the laws of State C. Employer M has been determined to be an organization described in section 501(c)(3) of the Code and exempt from tax under section 501(a).

Convention B is a State C nonprofit corporation that qualifies as an organization described in section 501(c)(3) of the Code that is exempt from tax under section 501(a). Convention B is a convention or association of churches organized and operated exclusively for religious purposes. Convention B's Constitution provides that Convention B is an entity which provides an organization through which Church A churches in State C can cooperate in their efforts to bring people into a right personal relationship with God through faith in Jesus Christ and to help forward Christ's whole program of preaching, teaching, healing and ministering throughout the world. The Constitution also provides that Convention B is founded on a fellowship based upon a doctrinal statement of faith known as the Church A Faith and Message, adopted by the Church A Convention. Membership in Convention B consists of messengers who are members of cooperating, contributing Church A churches.

Employer M's purposes, as stated in its Articles of Incorporation are 1) to provide students with elementary and secondary educational opportunities which are academically excellent in an environment which nurtures Christian values, and 2) to transact any or all other lawful activities for which nonprofit corporations may be incorporated under the State C Revised Statutes, and operate exclusively for charitable, scientific, literary, religious or educational purposes within the meaning of section 501(c)(3) of the Code.

Employer M's Employee Handbook contains its mission statement. Employer M's mission is to be a Christian college preparatory institution and its primary objective is to reach the youth of State C with the gospel of Jesus Christ in accordance with Church A doctrine. This objective is achieved by Christian faculty and staff nurturing each student toward attaining his or her fullest potential spiritually, intellectually, physically, socially and emotionally.

Employer M's Employee Handbook provides that, to achieve its mission, Employer M will employ only individuals who 1) have accepted Jesus Christ as Lord and

Savior of their lives, and 2) demonstrated a living relationship with Jesus Christ as described in Tenet D, the tenets of Church A. Additionally, to ensure that Church A doctrine is taught in accordance with Tenet D, all administrators as well as faculty who teach Bible must be active members of a church affiliated with Convention B or a church of like faith and practice, as determined by the Board of Directors of Employer M. Only in exceptional circumstances may the Board of Directors waive this requirement.

Employer M's Articles of Incorporation provides that in the event of its dissolution, Employer M's assets shall be distributed to Convention B if Convention B is then exempt under section 501(c)(3) of the Code, and if Convention B is not then so exempt, the assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Code.

Each year, as part of the proceedings of its annual meeting, Convention B publishes a directory of institutions and organizations affiliated with Convention B. Employer M is listed in that directory, along with information on Employer M's Board of Directors and its financial information, including balance sheets, statement of cash flows and statement of activities.

Pursuant to its Articles of Incorporation, the administrators of Employer M are the Directors, Officers and Members. Employer M's Members consist of the voting members of the Executive Board of Convention B. Under Employer M's Articles of Incorporation, Employer M's Members specifically have the right to:

- 1) vote on any amendment to Employer M's Articles of Incorporation;
- 2) vote to alter, amend or repeal Employer M's By-Laws, or adopt new By-Laws;
- 3) fix the number of Directors of Employer M (except the number of the first Board of Directors, which is fixed by the Articles of Incorporation);
- 4) elect and remove Directors of Employer M, establish their terms of office and fill vacancies among the Directors;
- 5) authorize the sale, lease, exchange or mortgage of all or substantially all of the property and assets of Employer M;
- 6) authorize the voluntary dissolution of Employer M or revoke proceedings therefor;
- 7) adopt a plan for the distribution of the assets of Employer M;
- 8) vote on any plan of merger or consolidation; and
- 9) place limits on the total financial obligations of Employer M.

Employer M's By-Laws provides that the Board of Directors of Employer M has, among other powers, the power to appoint and remove the President, other Officers and other administrative officials of Employer M in accordance with the terms of the By-Laws, provided that the power to appoint and remove administrative officials, but not Officers of Employer M, may in the discretion of the Board be delegated to the President of Employer M.

Employer M's By-Laws also provides that the President of Employer M and the President of the Executive Director-Treasurer of Convention B shall serve as *ex officio* members of Employer M's Board of Directors without power to vote. Furthermore, the By-Laws provides that members of Employer M's Board of Directors shall be participating members of churches affiliated with Convention B.

The President of Employer M reports directly to Employer M's Board of Directors. The members of Employer M's Board of Directors are appointed by, and report to, the Executive Board of Convention B. Employer M currently receives a small percentage of its financial support from Convention B.

The Executive Board of Convention B serves as Convention B *ad interim* and may act for Convention B on all matters not reserved for action solely by Convention B or where no Convention B committee has specific power to act. Employer M's By-Laws provides that the annual audit of Employer M's accounting records shall be submitted to the Executive Board of Convention B, which acts on behalf of Convention B. The Executive Board also acts as Convention B's principal advisory group on the total program, unless some other Convention B committee is so named. Through Convention B's Executive Board, Convention B has control over Employer M's Articles of Incorporation, By-Laws, Board of Directors, sales, leases, exchanges, mortgages of property and assets, voluntary dissolution, distribution of assets, merger or consolidation, and financial obligations.

Employer M does not discriminate with respect to race, color, national or ethnic origin, gender, or disability in areas of admissions, financial aid, or athletic and other school-administered programs. Members of Church A are not given preferential treatment for admission, there is no specific percentage of enrollment set aside for members of Church A, and financial aid is offered to all students and is awarded to any student whose family is determined to be in need. Some scholarships prefer a member of Church A as a recipient, but it is not a requirement that the recipient be a member of Church A.

Religion is part of Employer M's curriculum. Students are taught Bible at all grade levels and are required to attend chapel weekly.

Employer M has established and continues to maintain certain plans for the benefit of its employees. These plans are Plan V (medical plan), Plan W (medical plan), Plan X (dental plan), Plan Y (life insurance plan) and Plan Z (flexible spending plan). These Plans are referred to collectively as the Plans. Plan V was established in 1973;

Plan W was established in \_\_\_\_\_ Plan X was established in \_\_\_\_\_ ; Plan Y was established in \_\_\_\_\_ ; and Plan Z was established in \_\_\_\_\_ .

Until \_\_\_\_\_ , Employer M served as the Plan Administrator of the Plans. However, the Board of Directors of Employer M, by resolution at its meeting on \_\_\_\_\_ , appointed the members of Committee N, and the Plans have since been administered by Committee N. Committee N is composed of three employees of Employer M: the Director of Human Resources, the Human Resources Specialist and the Director of Finance. The Committee N members serve at the pleasure of Employer M's Board of Directors. Committee N's principal purpose is to administer the Plans in accordance with the governing Plan provisions.

Based on the foregoing facts and representations, Employer M requests a ruling that Plan V, Plan W, Plan X, Plan Y and Plan Z are church plans within the meaning of section 414(e) of the Code in all years since established.

Section 414(e)(1) of the Code generally defines a church plan as a plan established and maintained for its employees (or their beneficiaries) by a church or a convention or association of churches which is exempt from taxation under section 501 of the Code.

Section 414(e) was added to the Code by section 1015 of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93-406, 1974-3 C.B. 1, enacted September 2, 1974. Section 1017(e) of ERISA provides that section 414(e) applied as of the date of ERISA's enactment. However, section 414(e) was amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), Public Law 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 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 his or her 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 tax 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 subparagraph (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 or 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) of the Code provides that if a plan, intended to be a church 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 this subsection for the year in which the correction was made and for all prior years. Section 414(e)(4)(C)(i) provides, in pertinent part, 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 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 by virtue of the organization's affiliation with the church or convention or association of churches and that the plan will be administered by an organization of the type described in section 414(e)(3)(A).

Employer M is a nonprofit school under the laws of State C. Employer M has been determined to be an organization described in section 501(c)(3) of the Code and exempt from tax under section 501(a). Its mission is to be a Christian college preparatory institution and its primary objective is to reach the youth of State C with the gospel of Jesus Christ in accordance with Church A doctrine. To achieve its mission, Employer M employs only individuals who have demonstrated a living relationship with Jesus Christ as described in Tenet D, the tenets of Church A. Additionally, to ensure that Church A doctrine is taught in accordance with Tenet D, in general all administrators as well as faculty who teach Bible must be active members of a church affiliated with Convention B or a church of like faith and practice, as determined by the Board of Directors of Employer M.

Convention B is a State C nonprofit corporation that qualifies as an organization described in section 501(c)(3) of the Code that is exempt from tax under section 501(a). Convention B is a convention or association of churches organized and operated exclusively for religious purposes. Convention B's Constitution provides that Convention B is an entity which provides an organization through which Church A churches in State C can cooperate in their efforts to bring people into a right personal relationship with God through faith in Jesus Christ and to help forward Christ's whole program of preaching, teaching, healing and ministering throughout the world. The Constitution also provides that Convention B is founded on a fellowship based upon a doctrinal statement of faith known as the Church A Faith and Message, adopted by the Church A Convention. Membership in Convention B consists of messengers who are members of cooperating, contributing Church A churches.

In the event of its dissolution, Employer M's assets shall be distributed to Convention B if Convention B is then exempt under section 501(c)(3) of the Code. Employer M is listed in Convention B's directory as an organization affiliated with Convention B. This listing also includes Employer M's financial information, including balance sheets, statement of cash flows and statement of activities.

Through Convention B's Executive Board, Convention B has control over Employer M's Articles of Incorporation, By-Laws, Board of Directors, sales, leases, exchanges, mortgages of property and assets, voluntary dissolution, distribution of assets, merger or consolidation, and financial obligations.

In view of the stated purpose of Employer M, its organization and structure, its actual activities and its recognized status within Convention B, Employer M employees meet the definition of 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 which is controlled by or associated with a church or convention or association of churches.

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.

In this regard, Plan V, Plan W, Plan X, Plan Y and Plan Z are maintained by Employer M and have been administered by Committee N since Committee N was established by the Board of Directors of Employer M. The members of Committee N are appointed by and serve at the pleasure of the Board of Directors of Employer M. Committee N is composed of three employees of Employer M: the Director of Human Resources, the Human Resources Specialist and the Director of Finance. These relationships and restrictions help to insure that Committee N is indirectly controlled by or associated with Church A, through its relationship with Convention B and Employer M. Committee N's principal purpose is to administer the Plans in accordance with the governing Plan provisions.

Also, as provided under section 414(e)(4) of the Code, 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 the correction is made and for all prior years. Committee N was established to administer Plan V, Plan W, Plan X, Plan Y and Plan Z on

Therefore, the administration of Plan V, Plan W, Plan X, Plan Y and Plan Z satisfies the requirements regarding church plan administration under section 414(e)(3)(A) of the Code. Accordingly, Plans V, W, X, Y and Z are maintained by an organization that is controlled by or associated with a church or convention or association of churches, and the principal purpose or function of which is the

administration of the Plans for the provision of retirement benefits or welfare benefits for the employees of Employer M.

Plan V was established in \_\_\_\_\_ and Plan W was established in \_\_\_\_\_. Pursuant to the rules of section 407(b) of MPPAA, section 414(e) of the Code was effective as of January 1, 1974.

Accordingly, with respect to your ruling request, we conclude that Plan V and Plan W qualify as church plans within the meaning of section 414(e) of the Code retroactive to January 1, 1974. We also conclude that Plan X, Plan Y and Plan Z qualify as church plans within the meaning of section 414(e) of the Code in all years since established.

We are not ruling, directly or indirectly, on whether Plan Z constitutes a cafeteria plan within the meaning of section 125 of the Code or on whether amounts allocable to the benefits under Plan Z are constructively received or nontaxable. Therefore, this ruling shall not be construed as approving Plan Z under section 125 of the Code or any other provision of the Code except section 414(e).

This letter 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 as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. Should you have any concerns regarding this letter, please contact \_\_\_\_\_

Sincerely yours,



Manager, Technical Group 3  
Employee Plans

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose