

Reproduced with permission from Pension & Benefits Reporter, 40 BPR 2041, 08/27/2013. Copyright © 2013 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Church Plans

Courts, Rather Than IRS, May Be Arbiter Of Church Plan Exemption, Practitioners Say

Recent Internal Revenue Service rulings on the “church plan” status of retirement plans sponsored by large hospital systems, including a ruling apparently received by the Saint Peter’s Healthcare System Retirement Plan, indicate that the IRS is disinclined to modify its long-standing interpretation of church plan exemption under federal pension law, practitioners told BNA Aug. 23.

“This is an obvious setback for the St. Peter’s plan participants who were fighting for the IRS to go their way,” said Thomas E. Clark Jr., chief compliance officer at FRA PlanTools, a fiduciary consulting company.

The IRS appears to have issued a ruling granting church plan status to the Saint Peter’s Healthcare System Retirement Plan, according to an Aug. 22 participant letter that BNA obtained (164 PBD, 8/23/13). BNA was unable to obtain a copy of the IRS ruling.

“The real fight for those who believe the IRS has been getting this wrong for decades is going to be in the courts. I wouldn’t be surprised at all to see the Supreme Court being the final arbiter.”

—THOMAS E. CLARK JR., FRA PLANTOOLS

The key takeaway from recent church plan rulings for sponsors of church plans is that they should adhere to the structural requirements described in the rulings, said Ralph E. DeJong, a partner at McDermott Will & Emery in Chicago.

Letter to Participant. The Aug. 22 letter from the Saint Peter’s Healthcare System, addressed to a participant of the retirement plan, informed the participant that the plan is exempt from the requirements of the Employee Retirement Income Security Act and that the plan has been a church plan since Jan. 1, 1974, when ERISA was enacted. The IRS informed the Saint Peter’s Healthcare System of the ruling Aug. 14, according to the participant letter. St. Peter’s University Hospital requested the ruling in October 2006, the letter said.

Recent IRS rulings on church plan status have created concern among pension advocates that partici-

pants could lose earned benefits and pension protections guaranteed by the Pension Benefit Guaranty Corporation (138 PBD, 7/18/13; 40 BPR 1754, 7/23/13).

Clark, a former ERISA litigator who has written about several church plan cases on his company’s blog, said that “it’s now safe to say that any wholesale change in this area will not start with the IRS.” Instead, he said, “the real fight for those who believe the IRS has been getting this wrong for decades is going to be in the courts. I wouldn’t be surprised at all to see the Supreme Court being the final arbiter,” Clark said.

Meanwhile, the hospital system has filed a motion to dismiss a class-action complaint, *Kaplan v. Saint Peter’s Healthcare System*, D.N.J., No. 3:13-cv-02941, complaint filed 5/7/13, said Karen Ferguson, director of the Pension Rights Center, which has been closely following the Saint Peter’s Healthcare System case.

The plaintiff’s reply is due Sept. 23, Ferguson said.

IRS Ruling Position. The apparent Saint Peter’s church plan ruling is “remarkable” in several respects, DeJong told BNA.

The IRS ruling position on what is or is not a church plan is essentially unchanged and has not been swayed by five well-publicized class actions filed against church plan sponsors in recent months, DeJong said.

“Even the fact that this particular ruling involved one of the defendants in the class action rulings did not dissuade the IRS from completing the ruling process and issuing a favorable ruling,” DeJong said.

He added that it took the IRS “an extraordinarily long time” to issue the ruling but that “the time it takes to get the ruling does not change or diminish its retroactive nature.”

Plans that have been structured and administered to qualify as church plans but that have not made an irrevocable election to be covered by ERISA “can still claim that they should retroactively qualify as church plans,” knowing that the IRS still grants rulings confirming that status, DeJong said.

It also is noteworthy, he said, that the existence of a ruling that a plan is a church plan is unlikely to change the arguments made in the Saint Peter’s class action lawsuit. “The lawsuit claims that the long-standing IRS position on what qualifies as a church plan is simply wrong, so any IRS ruling consistent with that traditional position is unlikely to change the arguments being made in the lawsuit,” DeJong said.

DeJong added that sponsors of church plans “should continue to review the IRS rulings closely and make sure that, at a minimum, they adhere to the structural requirements described in those rulings to qualify for and support church plan status.” Those structural requirements have not changed, but it is likely that the

IRS will expect much closer compliance with those structural requirements, he added.

Pension Advocates Disappointed. Ferguson said she is disappointed with the apparent ruling.

“The ruling is particularly disappointing since many of Saint Peter’s participants had filed comments documenting that their pension plan has been an ERISA plan since Jan. 1, 1974, and had specifically requested the opportunity to participate in the decision-making procedure by making oral presentations at an IRS meeting, as contemplated by Revenue Procedure 2011-44,” Ferguson said.

“No meeting was ever held,” she said.

In addition, the private letter ruling was issued while litigation is pending that challenges Saint Peter’s contention that it is a church plan, Ferguson said.

She added that the IRS has not released the ruling to the public and is unlikely to do so for 90 days. “This makes it impossible for the participants or their advocates to challenge the assertions made by Saint Peter’s in its ruling request, submitted under penalty of per-

jury, or the rationale provided by the IRS,” Ferguson said.

If the IRS rationale turns out to be similar to a recent PLR issued to a religiously affiliated university for its defined contribution plan (161 PBD, 8/20/13; 40 BPR 2000, 8/20/13), it will reflect a long-standing misreading of the law by the agency, Ferguson said.

“It will now be for the courts and Congress to determine whether the IRS should be allowed to continue to allow retirement plans that have been ERISA plans for decades to convert to church plan status solely for the purpose of saving millions of dollars at the expense of the retirement security of their current and former employees,” she said.

BY FLORENCE OLSEN

The full text of the Kaplan v. Saint Peter’s Healthcare System complaint is at http://www2.bloomberglaw.com/public/desktop/document/KAPLAN_v_SAIN_T_PETERS_HEALTHCARE_SYSTEM_et_al_Docket_No_313cv0294.