

PLR 201333024 - Section 414 - Definitions and Special Rules

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

WASHINGTON, D.C. 20224

MAY 22 2013

U.I.L 414.08-00

LEGEND:

Plan A =

University B =

Order C =

Religion D =

Province E =

Council F =

Directory G =

Congregation1 H =

Dear [redacted data]:

This letter is in response to your request dated August 8, 2012, as supplemented on December 4, 2012, submitted on your behalf by your authorized representative, regarding the church plan status of Plan A within the meaning of section 414(e) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

University B, a private university, is a non-profit corporation exempt from taxation as an organization described in Section 501(c)(3) of the Code. The University was founded in 1955 by members of Order C, a religious order within Religion D. In the United States, Order C's congregation is organized as Province E.

Under the laws of Religion D, Province E is controlled by the General Administration of Order C, the world-wide parent to all Order C congregations. The General Administration, in turn, is governed by the decisions of Congregation H, an office within the headquarters of Religion D. Province E is thus controlled by Religion D and is an institution of that church. Province E is led by Council F.

University B is a membership organization, whose members (the "Members") oversee University B's Board of Regents. Under University B's articles of incorporation, the Members consist of (a) the official head of Council F, (b) all other members (currently 7) of Council F, (c) the President of University B, and (d) the Chair of University B's Board of Regents. Eighty Percent of the Members of University B are thus also members of Council F. University B is listed in Directory G, the official directory of Religion D. University B's articles of incorporation provide that upon dissolution of University B, its assets are to be distributed to Province E or its successor.

University B's governing body is its Board of Regents. University B's by-laws provide that each nominee to the Board of Regents must be approved by the Members of University B. The Members also have authority to remove a Regent at any time. University B's by-laws additionally state that Council F may appoint up to two of its members to serve as Regents.

University B's by-laws provide that the head of the Council F serves as Chancellor of University B and as a member of the Board of Regents. The Chancellor's duties are to ensure and enhance Order C's presence at University B, to be an ex officio member of the Board of Regents, to maintain official relationships with the ecclesiastical hierarchy of Religion D, and to preside at appropriate University B functions.

The President of University B is appointed by the Board of Regents, and must be approved by the Members. The Board of Regents may remove the President at any time. The bylaws require that the President be a member of Religion D, that the head of the Council F or his designee will be members of the search committee that recommends a candidate for President, and that the

search committee should give preference to candidates who are members of Order C. The bylaws require that the President have the ability to provide leadership for University B as a Religion D and Order C university. The President is responsible for the administration of University B's affairs, and may delegate his executive or administrative authority to other University B officials.

University B also maintains an active campus ministry which promotes and supports University B's Religion D and Order C identities, and seeks to build a community of faith at the university. Responsibility for the campus ministry is held by a full-time Rector, who reports to University fe's President and is part of the senior leadership team at University B. The Rector ialso acts as the liaison between University B and the local governing body of Religion D. The campus ministry sponsors religious and fellowship activities, including retreats, freshmen seminars, and liturgical celebrations for the campus. A community of brothers in Order C live on the campus, and hold various positions in the faculty and staff of University B.

Plan A, a defined contribution plan, was established by University B effective July 1, 19[redacted data], and operates under the requirements of section 401 (a) of the Code. Under the

bylaws of University B, University B's President may delegate his executive and administrative authority to other officials of University B, and has the authority to establish such committees as are necessary for the general function of University B.

Prior to April 16, 20 [redacted data], University B's President had informally delegated executive and administrative authority over Plan A to two specific university officials, who functioned as a Retirement Committee. On April 16, 20 [redacted data], University B's President formally established a Retirement Committee by a written resolution. The resolution formally delegated executive and administrative authority over Plan A and other retirement plans maintained by University B to the Retirement Committee, and re-affirmed the prior delegation of such authority. The resolution specified that the delegated authority included the authority to amend Plan A (in some cases only with the approval of the President) and to execute other documents related to and necessary for the proper administration of the retirement plans The Retirement Committee's sole responsibility is to administer and maintain Plan A and other retirement plans maintained by the University, and the committee is under the direct supervision of, and reports to, University B's President.

University B has not made an election under section 410(d) of the Code for Plan A. All of the eligible participants in Plan A are employed by University B, and Plan A does not include employees of any for-profit entities or any unrelated trades of businesses within the meaning of section 513 of the Code.

In accordance with Revenue Procedure [2011-44](#), 2011-39 I.R.B. 446, Notice to Employees with reference) to Plan A was provided on August 6, 2012. This notice explained to participants of Plan A the consequences of church plan status.

Based on the foregoing, you request a ruling that Plan A is a church plan within the meaning of section 414(e) of the Code.

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\(e\)\(2\)](#) of the Code provides, in part, that the term "church plan" does not include a plan that is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Code); or if less than substantially all of the individuals included in the plan are individuals described in section 414(e)(1) of the Code or section 414(e)(3)(B) of the Code (or their beneficiaries).

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 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 generally defines “employee” of a church or a convention or association of churches 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 of the Code, 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 of the Code 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\(e\)\(4\)\(C\)\(i\)](#) of the Code 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.

Revenue Procedure [2011-44](#), 2011-39 I.R.B. 446 supplements the procedures for requesting a letter ruling under section 414(e) of the Code relating to church plans. The revenue procedure: (1) requires that plan participants and other interested persons receive a notice in connection with a letter ruling request under section 414(e) of the Code for a qualified plan; (2) requires that a copy of the notice be submitted to the Internal Revenue Service (IRS) as part of the ruling request; and (3) provides procedures for the IRS to receive and consider comments relating to the ruling request from interested persons.

In order for an organization that is not itself a church or convention or association of churches to have a qualified church plan, it 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) of the Code by virtue of the organization's control by or affiliation with the church or convention or association of churches. Employees of any organization maintaining a plan are considered to be church employees if the organization: (1) is exempt from tax under section 501 of the Code; and (2) is controlled by or associated with a church or convention or association of churches. In addition, in order to be a church plan, the administration or funding (or both) of the plan must be 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 or funding of the plan and must also be controlled by or associated with a church or convention or association of churches.

In this case, University B is a not-for-profit corporation which is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501 (c)(3) of the Code. University B is listed in Directory G. Members of Council F constitute 80% of the Members of University B, who have the authority to approve and remove University B's Board of Regents, and to approve any nominee for President of University B. Council F leads Province E, which is

controlled by the General Administration of Order C, the world-wide parent to all Order C congregations. The General Administration of Order C, in turn, is governed by the decisions of Congregation H, an office within the headquarters of Religion D.

The head of Council F is ex-officio the Chancellor of University B and a member of the Board of Regents. The Chancellor's duties are to enhance Order C's presence at University B and to maintain official relationships with the leadership of Religion D. University B's by-laws require that the President of University B be a member of Religion D, that preference is given to members of Order C in selecting the President of University B, and that the head of Council F or his designee be a member of the search committee to nominate the President of University B. In view of the common religious bonds between University B, Order C, and Religion D, the inclusion of University B in Directory G, Council F's control of the Members of University B, and the status of Council F within Religion D, we conclude that University B is controlled by or associated with a church or convention or association of churches within the meaning of section 414(e)(3)(D) of the Code. Accordingly, we conclude that under section 414(e)(3)(B) of the Code, the employees of University B are deemed to be employees of a church or a convention or association of churches, because they are employees of an organization which is exempt from tax under section 501 of the Code and which is controlled by or associated with a church or a convention or association of churches.

The Retirement Committee has authority and responsibility to administer Plan A, pursuant to a written delegation of executive and administrative authority from the President of University B. The Retirement Committee's sole responsibilities are the administration of University B's retirement plans. The Retirement Committee reports directly to the President of University B. Under University B's by-laws, the President of University B is required to be a member of Religion D, must have the ability to provide leadership for the University as a Religion D and Order C University, and must be approved by the Members [redacted data]% of whom are also members of the Council F. The President is elected (and can be removed) by the Board of Regents, who in turn must be approved by (and can be removed by) the Members of the University," [redacted data]% of whom are also members of the Council F.

Given the President's control over the Retirement Committee, the President's substantial common bonds with Religion D and Order C, the control over the President exercised by Council F through its members' positions as Members of the University, and Council F's position within and control by Religion D, we conclude that the Retirement Committee is controlled by or associated with a church or association of churches.

Accordingly, Plan A is maintained by an organization that is associated with a church or convention or association of churches, and whose principal purpose or function is administration of a retirement plan for deemed employees of a church or convention or association of churches.

The Retirement Committee, which is essential to satisfaction of the church plan requirements, was formally established on April 16, 20 [redacted data], As provided under section 414(e)(4)(A) 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) of the Code for the year in which the correction is made and for all prior years. The formal establishment of the Retirement Committee to administer the Plan on April 16, 20 [redacted data] was within the correction period for Plan A.

Based on the foregoing facts and representations, we conclude that Plan A is a church plan under section 414(e) of the Code and has been a church plan within the meaning of section 414(e) of the Code retroactive to the plan's establishment effective July 1, 1989.

This letter expresses no opinion as to whether Plan A satisfies the requirements of section 401 (a) of the Code.

No opinion is expressed as to the tax treatment of the plan described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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 [redacted data] at [redacted data] please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Laura B. Warshawsky, Manager

Employee Plans

Technical Group 3

Enclosures:

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Notice of Intention to Disclose