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internal Revenue Service Department of the Treasury

Washington, DC 20224

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Refer Reply to:

T:EP:RA:**

Date: SEP 21 2000

Attn: **********

Re: **********

Legend:

State A = ******

District B = **********

Committee C = **********

Organization 0 = **********

Church A = **********

Plan X = **********

Dear **********

This is in response to your letter dated March 22, 1999, as supplemented by correspondence dated October 4, 1999, May 30, July 12, July 20, August 11 and August 14, 2000, which was submitted by your authorized representative on your behalf, with respect to the applicability of sections 403(b)(9) and 414(e) of the Internal Revenue Code to Plan X.

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

Organization 0 adopted Plan X for the benefit of ministers employed by Organization 0, District Councils of Church A, and individual Church A churches.

Organization 0 began in 1950 as a ministry of Church A, District B, and was incorporated as a separate entity on February 11, 1952, in order to make the ministry available to Church A churches beyond District B. Organization 0's ministry, and thus its sole purpose, is to assist Church A churches in spreading the gospel of Jesus Christ, by

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providing funding for the churches to extend their physical facilities. The members of Organization 0 consist of the 56 District Councils of Church A, which are located throughout the United States. Organization 0 is managed by a board of directors, which elects a President. Directors are elected by the membership and are superintendents and other officers of the District Councils.

All of the entities that may adopt Plan X are part of the same association or convention of churches, commonly referred to as a fellowship or denomination, based upon shared religious bonds and convictions. Each entity is exempt from taxation under section 501(c) (3) of the Code and is organized and operated exclusively for religious and charitable purposes. No part of the net earnings of any adopting entity may inure to the benefit of any person, private shareholder or individual.

The geographic scope of a District roughly conforms to state boundaries Each District is a separate nonprofit organization, which oversees the various individual Church A ministers and churches within the District. The Districts offer various ministries to Church A churches and ministers, including but not limited to: licensing and ordaining ministers; assisting churches in selecting pastors; providing common camp facilities; assisting in and carrying out various home and foreign missions and projects; and, many other ways common to most fellowships and denominations. Districts are governed by a board, referred to as a presbytery. Members of the presbytery are pastors of churches within the District, who are elected by a vote of their peers. All pastors within the District are eligible to vote.

The Church A fellowship consists of individual independent churches that voluntarily associate together as members of the District Councils. Each individual Church A church adheres to a common statement of faith adopted by the Districts and the General Council of Church A. Each individual church of Church A has its own separate board of directors selected from its membership, and voted on by members of each individual church. However, each church is subject to certain terms and conditions imposed by the District Councils, including but not limited to licensing, ordaining and overseeing ministers.

Plan X is administered by Committee C. The stated principal purpose or function of Committee C is the administration of Plan X. As set forth in Article III of the Restated Bylaws of Organization 0 at number 11, Committee C's members consist of the President, the Vice President, the Secretary and the Treasurer of Organization

0. The members of Committee C are also members of the Board of Directors of Organization 0 and must be members in good standing with the District Councils of Church A or a Church A church.

Plan X permits employees to enter into salary reduction agreements to make contributions on a pre-tax basis to the Plan pursuant to section 5.2. Such contributions are 100 percent vested at all times, and 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). Under section 18.2 of Plan X, certain direct or indirect rollover contributions may be made to Plan X.

Pursuant to Articles 11 and 20 of Plan X, distributions may be made only upon death, disability, termination of employment, attainment of age 59 1/2, hardship or the attainment of the Plan's latest distribution date.

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 Article 11 of Plan X, the required beginning date for a participant is April 1 of the calendar year following the later of the calendar year in which the participant attains age 70 1/2 or the calendar year in which the participant retires.

Under Article 18 of Plan X, 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, that effective August 1, 1999:

1. Plan X is a retirement income account plan under section 403(b)(9) of the Code that provides benefits to employees described in section 403(b)(1)(A) of the Code;
2. Plan X satisfies the requirements of section 403(b)(1) of the Code;
3. The balance to the credit of a participant in an annuity contract under section 403(b)(1) of the Code may be rolled over to Plan X pursuant to section 403(b)(8) of the Code; and,
4. Plan X is a "church plan" under section 414(e) of the Code.

With respect to ruling request one, 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 a 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 contract 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) with respect to benefits accruing after December 31, 1986, in taxable years ending after such date. In addition, this section provides 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 1/2, 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.

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 contract 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 taxable 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) of the Code 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 limits. In the case of an annuity contract described in section 403(b), the preceding sentence applies only to the portion of the annuity contract

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 provided 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.
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> 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.

In this case, you represent that Organization 0, 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 requirement 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 1/2, 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 ruling requests one and two that Plan X is a retirement income account plan under section 403(b)(9) of the Code that provides benefits to employees described in section 403(b)(1)(A) and that Plan X satisfies the requirements of section 403(b)(1).

With respect to ruling request three, section 403(b)(8)(A) of the Code provides generally that if any portion of the balance to the credit of an employee in an annuity contract described in section 403(b)(1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an annuity contract described in section 403(b)(1), and in the case of a distribution of property other than money, the property so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 403(b)(8)(B) of the Code provides that rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A)).

Section 402(c)(4) of the Code defines the term, "eligible rollover distribution" generally as any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust, except that such term shall not include any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or for a specified period of 10 years or more, any distribution to the extent such distribution is required under section 401(a)(9), and any hardship distribution described in section 401(k)(2)(B)(i)(IV).

Since we have determined in ruling requests one and two above that Plan X satisfies the requirements of section 403(b)(9) and (b)(1) of the Code, we conclude with respect to ruling request three that the balance to the credit of a participant in an annuity contract described under section 403(b)(1) may be rolled over to Plan X pursuant to section 403(b)(8), provided that the provisions of section 402(c)(2) through (7) are otherwise satisfied.

With respect to ruling request four, section 414(e)(1) of the Code 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 of the Code.

Section 414(e)(3)(A) of the Code provides that a plan, otherwise qualified, will qualify 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.

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 a 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 convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches.

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. In addition, a "church plan" must be established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 as provided in section 414(e)(1), or by an organization described in section 414(e)(3)(A) of the Code.

In view of the stated purpose of Organization 0, its organization and structure, its actual activities and its recognized status within Church A, Organization O's 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.

Having established that the employees of Organization 0 are "church" employees, the remaining issue is whether Organization O's Committee C is an organization controlled by or associated with a church or convention or association of churches, the principal purpose or function of which is the administration or funding of a plan within the meaning of section 414(e) (3) (A) of the Code.

In this regard, Plan X is maintained by Organization 0 and is administered by Committee C. Committee C's principal purpose or function is the administration of Plan X. The members of Committee C are the President, the Vice President, the Secretary and the Treasurer of Organization 0, as set forth in Article III of the Restated Bylaws of Organization 0 at number 11. The members of Committee C share common religious bonds and convictions with Organization 0 and Church A.

Accordingly, we conclude that Plan X is 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 or funding of Plan X for the provision of retirement benefits for the deemed employees of a church or convention or association of churches.

Therefore, we conclude that Plan X is maintained by an organization described in section 414(e)(3)(A) of the Code, and that Plan X qualifies as a church plan within the meaning of section 414(e).

This ruling is contingent upon the adoption of the amendments to Plan X, as stipulated in your correspondence dated July 12, 2000, and will have no effect unless such proposed amendments are adopted.

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.

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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,

(signed) JOYCE B. FLOYD

Joyce B. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government
Entities Division

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