



The following facts and representations have been submitted under penalty of perjury on Entity A's behalf:

Entity A is a residential addiction treatment center that has served Church D for more than 60 years. Entity A provides alcoholism and addiction treatment solely to clergy, men and women religious, and seminarians. Entity A is a § 501(c)(3) non-profit organization, and is listed in Church Directory E.

Entity A's Articles of Incorporation provide that Entity A was formed in part to perform the \_\_\_\_\_ and to encourage their performance for and on behalf of alcoholics and addicts who are in need. The \_\_\_\_\_ are a basic foundation of Church D.

Historically, all members of the Board of Trustees of Entity A have been members of Church D (although such membership is not required by the bylaws). Currently, at least five of the members of the Board of Trustees are \_\_\_\_\_ of Church D. Under Entity A's bylaws, a minimum of two Board of Trustee seats must be held by alumni of Entity A. Meetings of the Board begin and end with a Church D prayer. Upon Entity A's dissolution, Entity A's assets shall be distributed to Church Official B and Church Official C and their successors for the use and benefit of Church D.

The President of Entity A is selected by the Board of Trustees, and also serves as the Chief Executive Officer of Entity A. The executive leadership of Entity A appointed by the Board of Trustees historically has consisted of members of Church D, and often Entity A's spiritual director or pastor will conduct a traditional \_\_\_\_\_ formally recognizing the executive leader as a \_\_\_\_\_ of Church D.

Entity A's bylaws also provide for the appointment of advisory boards whose purpose is to assist management in improving Entity A's services to Church D. Entity A has two such advisory boards. All 23 board members of the advisory boards are members of Church D and 19 of the 23 board members are \_\_\_\_\_ of Church D.

Each of Entity A's campuses includes a Church D chapel. The majority, if not all, of the governance, fundraising and alumni activities of Entity A are accompanied by a celebration of a Church D religious service, and a daily Church D religious service is held on Entity A's campus for the benefit of Entity A's staff and clients. When clients of Entity A are discharged from treatment, a Church D religious service is held in the client's honor.

Entity A established Plan X, a defined benefit plan qualified under § 401(a), effective in Year 1, in order to provide retirement benefits to eligible employees of Entity A. Plan X was frozen effective Date 2.

Entity A has the authority to designate the plan administrator of Plan X, and has established Committee F to administer the retirement benefits of employees of Entity A, including Plan X. The members of Committee F are appointed by the Board of Trustees. Committee F is comprised of three members: Entity A's Chief Executive Officer (CEO), Chief Financial Officer (CFO), and Human Resources Manager. The CEO and CFO are members of Church D, and members of Committee F carry out their duties in accordance with Entity A's mission.

None of the eligible participants in Plan X are employed in connection with a for-profit entity or one or more unrelated trades or businesses of Entity A within the meaning of § 513.

Neither Entity A nor Committee F has ever filed an affirmative and irrevocable election attached to a Form 5500 (Annual Return/Report of Employee Benefit Plan) or a Form 5300 (Application for Determination for Employee Benefit Plan) under § 410(d) with regard to Plan X. However, Entity A has in the past voluntarily operated Plan X in compliance with standards of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, including filing Form 5500 for the plan, paying premiums to the Pension Benefit Guaranty Corporation, and updating and amending the plan on a continuous basis.

A notice to interested persons regarding Plan X was provided in accordance with Revenue Procedure 2011-44, 2011-39 I.R.B. 446. This notice explained the consequences of church plan status.

Based on the foregoing, Entity A requests the following rulings:

- a. That Plan X is and has been a church plan retroactive to Date 3 under the provisions of § 414(e) of the Code.
- b. That Entity A's administration and operation of Plan X, through Committee F, as if subject to Title I of ERISA does not constitute an irrevocable election under § 410(d).

With respect to your first ruling request, § 414(e)(1) 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 § 501.

Section 414(e)(2) 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 § 513); or if less than substantially all of the individuals included in the plan are individuals described in § 414(e)(1) or 414(e)(3)(B) (or their beneficiaries).

Section 414(e)(3)(A) 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. See *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017), holding that a plan that is maintained by an organization described in § 414(e)(3)(A) may be a church plan under § 414(e) even if it was not established by a church or a convention or association of churches.

Section 414(e)(3)(B) 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 § 501, and which is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(C) provides that a church or a convention or association of churches which is exempt from tax under § 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

Section 414(e)(3)(D) 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.

Revenue Procedure 2011-44, 2011-39 I.R.B. 446, supplements the procedures for requesting a letter ruling under § 414(e) 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 § 414(e) for a qualified plan; (2) requires that a copy of the notice be submitted to the 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 a 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 a convention or association of churches under § 414(e)(3)(B) by virtue of the organization’s control by or association 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 § 501; and (2) is controlled by or associated



function of which is the administration of Plan X for the provision of retirement benefits for the deemed employees of a church or a convention or association of churches.

Based on the foregoing facts and representations, we conclude that Plan X is a church plan as defined in § 414(e), and has been a church plan since Date 3.

With respect to your second ruling request, § 410(d) allows a church or a convention or association of churches which maintains any church plan to make an irrevocable election that certain provisions of the Code and Title I of ERISA shall apply to the plan as if it were not a church plan.

Section 1.410(d)-1(c)(3) of the Regulations provides that the plan administrator of the church plan may make the election by attaching an affirmative statement to either (i) the plan's annual return required under § 6058(a) (i.e., Form 5500) with respect to the plan which is filed for the first plan year for which the election is effective or (ii) a written request for a determination letter relating to the qualification of the plan (e.g., Form 5300). Section 1.410(d)-1 does not provide for an alternative form of election. Accordingly, we conclude that the administration and operation of Plan X, through Committee F, as if it were subject to Title I of ERISA, does not constitute an election under § 410(d).

This letter expresses no opinion as to whether the Plan X satisfies the requirements of § 401(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2018-1, 2018-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, § 11.05.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lauson C. Green  
Branch Chief, Qualified Plans Branch 2  
Office of Associate Chief Counsel  
(Tax Exempt and Government Entities )