



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200510043

DEC 15 2004

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Uniform Issue List No. 414.08-00

ATTN.: *****

Legend:

Church
Seminary

= *****
= *****

Teachings

= *****

Governing
Organization

= *****

State
Plan X

= *****
= *****

Plan Y

= *****

Dear *****:

This is in response to a letter dated ***** , supplemented by additional
correspondence dated ***** , and ***** , in which your authorized
representative requested a private letter ruling on your behalf under section 414(e) of
the Internal Revenue Code ("Code").

In support of your ruling requests you have submitted the following statements and information:

The Seminary is a not-for-profit corporation chartered on *****, under the laws of the State for the purposes of: (a) providing a training institution where candidates for the ministry, the mission field, and for various other Church functions may obtain instruction in the doctrines and practices of the Christian Faith; (b) awarding the Bachelor of Divinity Degree and such other degrees as may be approved from time to time by the State Council of Education; and (c) acquiring and holding estate for the above purposes. The Seminary's by-laws affirm this purpose, requiring its Board of Trustees to "determine and review periodically the purposes and mission of the corporation to insure that they are consistent" with the teachings and tenets of the Church.

On *****, the Internal Revenue Service ("Service") last determined the Seminary to be an organization described in Code § 501(c)(3), that is exempt from tax under § 501(a).

The Seminary is governed by a Board of Trustees established pursuant to provisions published in the Church's "Teachings" and confirmed in the Seminary's corporate by-laws. The Teachings in this case is a volume that fulfills several Church functions: it contains (1) an extensive statement and discussion of the Church's religious principles and practices; (2) organizational documents and charters for major church-affiliated institutions (including the Seminary); and (3) a listing of all Church-affiliated organizations, including individual churches, schools, regional organizations, and social ministry organizations. For the Seminary, both the Teachings and its own corporate by-laws specify that the Board of Trustees is made up of at least 25 and not more than 43 individuals. At least 25 of the Trustees must be Church members in good standing. Sixteen members in good standing of the Church are chosen by the Church's Governing Organization to be members of the Seminary's Board of Trustees. Seven additional members from the Church are elected by the Board of Trustees. The remaining two Church members of the Board of Trustees include the Bishop of the Church and one Seminary alumnus.

The Seminary President is elected by the Board of Trustees and also serves as a Board member. Up to 18 additional members of the Board of Trustees may be elected from other church organizations holding religious views similar in outlook to those of the Church, and whose candidates for the ministry may attend the Seminary to earn their degrees. Of the current members of the Board of Trustees, 11 are ordained Church ministers. Church members thus constitute a majority of the Seminary's Board of Trustees at all times. If one of the 16 members elected by the Governing Organization or the alumnus member terminates membership in the Church, his membership on the Seminary's Board of Trustees also is immediately terminated.

The Seminary has established and maintains two retirement plans for its faculty and employees and their beneficiaries. Plan X is described as an employer-funded tax-

sheltered annuity arrangement subject to the nondiscrimination requirements of Code § 403(b)(12). The Seminary contributes 8 percent of compensation on behalf of Plan X participants who complete a year of service during the plan's calendar year plan year. All employer contributions to Plan X are fully and immediately vested when made. Plan Y is also a tax-sheltered annuity arrangement established under Code § 403(b); it is funded by participants' elective deferrals.

Both Plan X and Plan Y name the "Institution," i.e., the Seminary, as having final authority in matters of plan administration. However, on *****, the Seminary's Board of Trustees passed a resolution creating a "Plan Administrative Committee" ("Committee") and naming the members thereof. Also, as confirmed in follow-up correspondence dated *****, your authorized representative has written that the Seminary's By-laws, and Plans X and Y, will be amended to delegate authority for plan administration to the Committee, and to provide that the Committee's sole and exclusive purpose will be to administer Plans X and Y. The proposed By-laws amendment provides that the Committee will be a permanent subcommittee of the Seminary's Finance Committee. The amendments to Plans X and Y describe the Committee's administrative authority, and you have further represented that Committee members will serve at the pleasure of, and be directly accountable to, the Seminary's Board of Trustees.

Neither the Seminary nor the Plan Administrative Committee has ever made a Code § 410(d) election on behalf of Plan X or Plan Y. A statement has never been filed to this effect with the Service.

Based on the above statements and representations you request a ruling that Plan X and Plan Y are church plans within the meaning of section 414(e) of the Code.

The employer or administrator of a plan subject to the Employee Retirement Income Security Act of 1974 ("ERISA") is required to file Form 5500 or Form 5500C (Annual Return/Report of Employee Benefit Plan). Church retirement programs, and various welfare benefit plans that are church plans are excused from the filing. See Announcement 82-146, 1982-47 I.R.B. 53, and sections 1A and 2B of the instructions to Form 5500.

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 by a convention or association of churches which is exempt from taxation under section 501.

Section 414(e)(3)(A) of the Code provides that a plan will be treated 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 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 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.

Section 414(e)(4) of the Code provides, in pertinent part, 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 section 414(e) for the year in which the correction was made and for all prior years. Section 414(e)(4)(C) 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 that is not itself a church or convention or association of churches to have a church plan under section 414(e) of the Code, that organization 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). 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; (2) is controlled by or associated with a church or convention or association of churches; and (3) provides for administration or funding (or both) of the plan by an organization described in section 414(e)(3)(A) of the Code.

In this case the Seminary is a not-for-profit corporation chartered by the State for the purpose of providing an institution where candidates for the ministry, mission field, and various other functions within the Church receive training, and may obtain instruction in the doctrines and practices of the Christian Faith. These doctrines and practices are contained in the Church's Teachings, a volume that provides an extensive discussion of the Church's religious principles, as well as a directory of Church-affiliated organizations. The Seminary's By-laws require its Board of Trustees to "determine and review periodically the purposes and mission of the corporation to insure that they are consistent" with the Teachings and tenets of the Church. The Seminary's By-laws

further mandate that a majority of its Board of Trustees will, at all times, be members of the Church. At present 11 of the Seminary's trustees also are ordained Church ministers.

The Seminary is also an organization that has been determined by the Internal Revenue Service to be an organization described in Code § 501(c)(3) and exempt from tax under § 501(a). It is concluded, based on the information provided, that the Seminary is an organization that shares common religious bonds and convictions with the Church and is, therefore, "associated" with the Church under the rules of Code § 414(e)(3)(D). It is further concluded that Seminary employees are employees of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Code, and which is associated with a church or a convention or association of churches. Under the rules of Code § 414(e)(3)(B), Seminary employees also are considered to be Church employees for purposes of the church plan rules. Conversely, under the rules of Code § 414(e)(3)(C), the Church is considered to be the employer of any individual who is determined to be a Seminary employee under Code § 414(e)(3)(B).

Having concluded that Seminary employees are Church employees under the church plan rules, it remains to be determined whether Plan X and Plan Y satisfy the requirements of Code § 414(e)(3)(A), in that they are 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, and whether such organization is controlled by or associated with a church or a convention or association of churches.

In this case, despite the recent creation of a Committee by the Seminary's Board of Trustees, Plans X and Y currently provide that the Seminary is the organization that has final authority in matters of plan administration. However, in follow-up correspondence dated *****, your authorized representative has indicated that the Seminary's corporate By-laws and Plans X and Y will be amended to provide that authority for plan administration will be delegated to the Committee, that the Committee will serve at the pleasure of, and be directly accountable to, the Seminary's Board of Trustees, and that the Committee's sole and exclusive purpose will be to administer Plans X and Y.

It is thus concluded that Plan X and Plan Y as amended, will be administered by the Committee, an organization controlled by or associated with the Church, the sole purpose or function of which is the provision of retirement benefits for individuals deemed to be Church employees. It is further concluded that the proposed amendments, contained in the follow-up correspondence dated July 26, 2004, to the Seminary's corporate By-laws and to Plans X and Y, will correct a failure to meet one of the church plan requirements of Code § 414(e). Once corrected, Plans X and Y shall be deemed to meet the requirements of Code § 414(e) for the year in which the correction was made and for all prior years in accordance with Code § 414(e)(4).

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Accordingly, we conclude that Plans X and Y are church plans within the meaning of Code § 414(e).

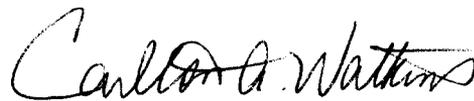
As previously discussed, this ruling takes effect upon adoption of the Plan X, Plan Y, and corporate By-laws amendments previously described in this letter.

This letter expresses no opinion as to whether Plan X or Plan Y satisfies the requirements for tax sheltered annuity arrangements under Code § 403(b). The Seminary may seek a separate ruling from Employee Plans Rulings and Agreements on the issue of whether Plan X or Plan Y meets the Code requirements of § 403(b).

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.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions pertaining to the ruling, please contact ***** this office by phone at [REDACTED] or by fax at [REDACTED] for further information.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted Copy of Ruling Letter
- ▶ Notice of Intention to Disclose (Notice 437)
- ▶ Copy of Cover Letter to Authorized Representative