



January 6, 1993

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100 N. Tryon Street, 47th Floor
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93-01A
ERISA SECTION
3(33),4(b)(2)

Dear Mr. Hall:

This is in reply to your correspondence on behalf of Mercy Hospital, Inc. (the Hospital) located in Charlotte, North Carolina concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concerning whether the Pension Plan for Employees of Mercy Hospital, Inc. (the Plan) constitutes a church plan within the meaning of section 3(33) of Title I of ERISA and, accordingly, whether the Plan is excluded from the requirements of Title I of ERISA by section 4(b)(2) thereof.

Your correspondence contains the following facts and representations. The Hospital is a nonprofit corporation established in 1906 by the Congregation of the Sisters of Mercy of Belmont, North Carolina (the Order). The Order is a religious order of women organized within, and sharing common religious bonds and convictions with, the Roman Catholic Church (the Church). One of the main activities of the Order is the provision of health care facilities. Through its listing in The Official Catholic Directory (P.J. Kenedy & Sons) (hereinafter, the Directory), the Order is entitled to participate in a group exemption from tax granted to the Church in accordance with section 501(c)(3) of the Internal Revenue Code (the Code) as interpreted by the Internal Revenue Service (IRS).

The Order founded Mercy Health Services, Inc. (MHS), a nonprofit corporation, as part of its ministry within the Church for the purpose of coordinating and supporting the delivery of health care services in the community by owning membership certificates in nonprofit hospitals and health corporations. The sole members of MHS are the major superior and the general councilors of the Order. The corporate members of MHS elect the MHS board of directors, consisting of from 3 to 18 members. MHS is listed in the Directory and thus is a tax-exempt organization within the meaning of 501(c)(3) of the Code pursuant to the group exemption described above.

The Hospital is also listed in the Directory and thus is tax-exempt within the meaning of section 501(c)(3) of the Code. Furthermore, the sole member of the Hospital is MHS, and the corporate members of MHS elect the Hospital's board of directors, consisting of from three to nine persons selected from three categories: the membership of the Order, the Hospital medical staff, and representatives of local business or industry. The president of MHS and the president of the Hospital serve ex officio on the Hospital's board of directors. The current Hospital board of directors consists of eight individuals, two of whom are members of the Order.

The Plan submitted in connection with your request is a defined benefit pension plan for the employees of the Hospital, restated effective January 1, 1976, and amended most recently, according to the materials you submitted, effective January 1, 1988. A private letter ruling was issued April 12, 1990, by IRS determining that the Plan constituted a church plan within the meaning of section 414(e) of the Code. The Pension Benefit Guaranty Corporation (PBGC) also issued an initial determination letter to the Plan dated July 2, 1990, stating the Plan was excluded from plan termination insurance provisions of Title IV of ERISA because of its status as a church plan.

You state that the Plan is operated under the authority of a Personnel and Pension Committee (the Committee) which is appointed by the Hospital's board of directors, all of whose members are elected by the corporate members of MHS, namely the major superior and the general councilors of the Order. The Committee consists of from six to nine individuals, one of whom is a member of the Order. You describe the principal purpose or function of the Committee as general administration and interpretation of the Plan, including Plan administration and funding. You further state that at least 80 percent of items listed in the minutes describing Committee meetings involve administration or funding of the Plan.

Your request for an advisory opinion regarding "church plan" status involves application of the provisions of sections 4(b)(2) and 3(33) of Title I of ERISA to the facts presented. Section 4(b)(2) of ERISA excludes from coverage under Title I of ERISA any plan which is a church plan as defined in section 3(33) of ERISA. The term "church plan" is defined in section 3(33) of ERISA, in pertinent part, as:

(A) The term "church plan" means a plan established and maintained (to the extent required in clause (ii) subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1986.

(C) For purposes of this paragraph--

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by 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.

(ii) The term employee of a church or a convention or association of churches includes--

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Internal Revenue Code of 1986 and which is controlled by or associated with a church or a convention or association of churches;...

(iii) A church or a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1986 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) 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....

It appears that the Order is an integral part of the Church by virtue of the religious and health care ministries it performs. Furthermore, the Order is tax-exempt under section 501(c)(3) of the Code, is controlled by the Church, and is "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA insofar as the Order clearly shares common religious bonds and convictions with the Church.

Through the Order the Church retains control over operation of MHS insofar as members of the Order established MHS and insofar as MHS is controlled by the Order through its major superior and general councillors as the sole corporate members of MHS. Furthermore, MHS is "associated with" the Church, within the meaning of section 3(33)(C)(iv) of Title I of ERISA, insofar as members of the Order as corporate members of MHS assure that MHS adheres to the tenets and teachings of the Church and, thus, shares common religious bonds and convictions with the Church. In addition, MHS is exempt from tax in accordance with section 501(c)(3) of the Code.

Through the Order and MHS, the Church also controls the Hospital insofar as the Hospital's sole corporate member is MHS and the corporate members of MHS (namely, the major superior and general councillors of the Order) elect the Hospital's board of directors. Participation of members of the Order in the Hospital's board of directors also assures that the Hospital adheres to the tenets and teachings of the Church and, thus, shares common religious bonds and convictions with the Church. Furthermore, the Hospital is tax-exempt pursuant to section 501(c)(3) of the Code.

Accordingly, it is the view of the Department of Labor (the Department) that individuals whose employment is with the Hospital constitute employees of an organization which is controlled by, or associated with, the Church within the meaning of section 3(33)(C)(ii)(II) of Title I of ERISA. In accordance with section 3(33)(C)(iii) of Title I of ERISA, the Church is deemed the employer of these individuals for purposes of the church plan definition in section 3(33).

Furthermore, in accordance with the church plan definition in section 3(33), the Church is deemed to maintain the Plan through control by the Order of appointments to the Committee (insofar as the major superior and general councillors of the Order as corporate members of MHS appoint the board of directors of the Hospital which, in turn, appoints the Committee) and through participation of a member of the Order in the Committee, which has as its principal purpose or function the administration of a plan for the provision of employee retirement benefits, assuring that a plan for individuals whose employment is with the Hospital meets the requirement of section 3(33)(C)(i). While the appointment of Committee members by the Hospital's board of directors which is, in turn, appointed by the corporate members of MHS (namely the major superior and general councillors of the Order) and the presence of a member of the Order on the Committee assures that the Church controls Plan administration, it also assures that Plan administration is "associated with" the Church within the meaning of section 3(33)(C)(iv) insofar as participation of members of the Order in control of the Committee and in the Committee itself assures that the Committee adheres to the tenets and teachings of the Church and shares common religious bonds and convictions with the Church.

For the above reasons and based on your representations, the Plan constitutes a church plan within the meaning of section 3(33)(A) of Title I of ERISA by operation of section 3(33)(C)(i) of Title I of ERISA. Because church plans described in section 3(33) of Title I of ERISA are excluded from the requirements of Title I of ERISA pursuant to section 4(b)(2) thereof, the Plan is not required to comply with the provisions of Title I of ERISA as administered by the Department and should inform plan participants accordingly.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 and, accordingly, is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions. This letter relates solely to application of the provisions of Title I of ERISA and, therefore, is not determinative of any particular tax treatment under the Code.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations