



April 4, 1994

Mr. I. Lee Falk
Morgan, Lewis & Bockius
2000 One Logan Square

94-13A
ERISA SECTION
3(33),4(b)(2)

Dear Mr. Falk:

This is in reply to your correspondence on behalf of Lutheran Social Services--East Region (hereinafter, LSSER) in Lititz, Pennsylvania, an institution of the Evangelical Lutheran Church in America (hereinafter, the Church). Specifically, you ask whether benefit arrangements for LSSER's employees are church plans within the meaning of section 3(33) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA).

Your correspondence and the accompanying documents contain the following facts and representations about the Church's organization, LSSER's subordination to the Church, and the benefit arrangements that LSSER provides for its employees.

The Church is composed of local Church congregations that are formed into synods. One of the Church's synods is the Lower Susquehanna Synod of the Church (hereinafter, the Synod).¹ The Synod is listed in the Church's Yearbook, which is the official listing of Church organizations, and serves local Church congregations in nine counties in south central Pennsylvania.²

LSSER is one of the Synod's three social ministries. The Synod established LSSER in 1965 as a nonprofit corporation under Pennsylvania law, and LSSER provides professional social services and social service programs in Lancaster and Lebanon Counties.³ Among its other endeavors, LSSER operates four housing facilities for older persons: Luther Acres and Luther Townhouse Apartments in Lititz, Spang Crest in Lebanon, and Saint John's Herr Estates in Columbia.

You represent that LSSER is subordinate to the Synod because LSSER operates under a constitution and articles of incorporation that must receive Synod approval. Further, the Synod elects directors to fill any vacancies on the board of directors of LSSER (hereinafter, the LSSER Board), and, in electing directors, considers only nominees submitted by the LSSER Board. Moreover, all directors on the LSSER Board must be members of local Church congregations within Lancaster and Lebanon Counties, and LSSER's executive director must be a member of a local Church congregation and preferably a Church minister.⁴

LSSER and its facilities for housing older persons, except for Saint John's Herr Estates, are listed in the Synodical Directory of the Lower Susquehanna Synod Evangelical Lutheran Church in America that was published in connection with the Synod's Fourth Annual Assembly in June, 1991. Also, the Church's 1992 Yearbook lists LSSER is "an affiliated social ministry organization" integral to the mission of the Church. Further, you submitted a memorandum issued by the Church to LSSER's executive director on November 13, 1990, in which the Church lists LSSER in connection with the group exemption from tax granted to the Church by the Internal Revenue Service (hereinafter, IRS) on April 5, 1988. Accordingly, you represent that LSSER participates in the group exemption from tax granted to the Church by IRS pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code).

LSSER employs individuals to carry out its mission within the Church and provides benefit arrangements for its eligible employees. Its benefit arrangements for employees (hereinafter, collectively, the Plans) comprise an insured medical care and hospitalization plan, two health plans provided through health maintenance organizations, a group life insurance plan, and a long term disability plan.

The Plans are administered by an Employee Benefits Committee (hereinafter, the Committee). The Committee consists of LSSER's executive director, who is appointed by the LSSER Board, and two additional Committee members that LSSER's executive director appoints. You further represent that the principal purpose or function of the Committee is to administer the Plans.

You submitted a private letter ruling that IRS issued to LSSER on June 4, 1993. Responding to a request by LSSER that included all Plans except its long term disability plan, IRS concludes in its private letter ruling that the Plans that LSSER submitted are church plans within the meaning of section 414(e) of the Code. You state that, notwithstanding omission of the long term disability plan from LSSER's private letter ruling request, LSSER's administrative arrangements in connection with its long term disability plan are identical to those for its other Plans.

Your request for an advisory opinion regarding "church plan" status involves application 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 that 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 follows:

a plan established and maintained (to the extent required in clause (ii) of sub-paragraph (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 or churches

It appears that either the Church or the Synod, or both, may constitute one or more "churches" or "conventions or associations of churches" within the meaning of section 3(33). Further, the Church through the Synod controls LSSER, a civil law corporation, because the Synod must approve amendments to LSSER's constitution and its articles of incorporation and the Synod elects all directors to the LSSER Board. In addition, LSSER is exempt from tax pursuant to section 501(c)(3) of the Code.

Further, because they assure that LSSER adheres to the tenets and teachings of the Church, the following factors evidence that LSSER shares common religious bonds and convictions with the Church: the Synod controls LSSER (as described above); members of local congregations of the Church serve as directors on the LSSER Board; a member of a local congregation of the Church, who is preferably a minister, serves as LSSER's executive director; and LSSER is listed in both the Church's and the Synod's official directories. Consequently, LSSER is "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA.

Accordingly, it is the view of the Department that individuals whose employment is with LSSER are employees of an organization that is a civil law corporation and that is controlled by, or associated with, a church or convention or association of churches 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 those individuals for purposes of the church plan definition in section 3(33); and the Church, as employer, is deemed to have established and to maintain the Plans that are the subject of this opinion.

In addition to the above reason for concluding that the Plans meet the church plan definition in section 3(33), they may be considered church plans because of the Committee's administration of the Plans. The Church controls the Committee because the LSSER Board, which (as described above) is controlled by the Church through the Synod, appoints LSSER's executive director to head the Committee and because LSSER's executive director, whose appointment to the Committee is controlled by the Church and the Synod through the LSSER Board, appoints the two remaining members of the Committee. Both the Church's control of the Committee and the presence on the Committee of LSSER's executive director, who must be a member of a local Church congregation and who is a Church minister, assure the Committee's adherence to the tenets and teachings of the Church and thus evidence that the Committee shares common religious bonds and convictions with the Church. Consequently, the Committee is "associated with" the Church within the meaning of section 3(33)(C)(iv). Because the Committee's principal purpose or function is administration of plans for the provision of employee welfare benefits and because the Committee is both controlled by and "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA, the Committee's administration of the Plans, by operation of section 3(33)(C)(i) of Title I of ERISA, also assures that the Church is deemed to maintain the Plans.

For the above reasons and based on your representations, it is the view of the Department that the Plans constitute church plans within the meaning of section 3(33)(A) of Title I of ERISA by operation of sections 3(33)(C)(i) and 3(33)(C)(iii) 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 Plans are 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. We note specifically that the status of LSSER's employee benefit arrangements that provide its employees with health benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) is within IRS jurisdiction.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations

¹ The Synod was formerly known as the Central Pennsylvania Synod of the Lutheran Church in America.

² The nine counties are Adams, Cumberland, Dauphin, Franklin, Fulton, Lancaster, Lebanon, Perry, and York.

³ The Synod merged in LSSER the activities of Lutheran Social Services of the Lancaster Conference and the Lutheran Service Society of Lebanon County.

⁴ You submitted material indicating that in both 1991 and 1992, LSSER's executive director was, in fact, a Church minister