

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



SEP 6 1985

85-32A

Mr. Samuel Robbins
Enrolled Actuary
The Wyatt Company
Pan Am Building, Suite 306
255 Ponce De Leon Avenue
Hato Rey, Puerto Rico 00917

Dear Mr. Robbins:

This is in reply to your letter of February 21, 1985, and previous correspondence with the Department of Labor (the Department) concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Pension Plan for Employees (the Plan) of Hospital de la Concepcion (the Hospital), San German, Puerto Rico. Specifically, you request an advisory opinion stating the Plan is a church plan within the meaning of section 3(33) of title I of ERISA and, thus, is excluded from compliance with title I provisions by section 4(b)(2) of title I of ERISA.

Your correspondence contains the following facts and representations. The Hospital has been operating in San German for over four centuries and has always been the property of the Roman Catholic Church. The Hospital was issued a certificate of incorporation as a nonprofit corporation February 27, 1956, by the Secretary of State of Puerto Rico. Since 1976, the Hospital has been owned by the Diocese of Mayaguez of the Roman Catholic Church of Puerto Rico. The 1984 Mayaguez Diocesan Directory indicates that the religious order of Sisters of Charity of Saint Vincent de Paul staff the Hospital. It appears that the Hospital has obtained exemption from tax as a nonprofit institution under the Puerto Rican Income Tax Act. You state that the reason the Hospital is not exempt under section 501 of the Internal Revenue Code (the Code) is that jurisdiction of the Internal Revenue Service (IRS) does not extend to the Hospital, but that you represent, for purposes of this advisory opinion, that if the Hospital were made subject to IRS jurisdiction it would be an organization exempt from tax under the appropriate sections of the Code.

The Hospital's Board of Trustees (the Board) derives its authority directly from the Bishop of Mayaguez. The Board has 15 members whom you describe as mainly "religious officials." The Bishop of Mayaguez is president of the Board and the diocesan vicar general is vice-president of the Board. You state that all Board members share common religious bonds and convictions with

the Roman Catholic Church. The president of the medical faculty participates in the administration of the Hospital only as an ex officio (nonvoting) member of the Board.

The Plan was approved by the Board on August 25, 1967, to provide pension benefits to Hospital employees. The Plan apparently operates in accordance with a trust document dated January 12, 1968, between the Bishop of Ponce (to whose diocese San German and the Hospital then belonged) and the Right Reverend Monsignor Pedro J. Ballester as trustee.

The Plan is administered by a Retirement Plan Committee. Its sole function is to administer the Plan for the benefit of the Hospital's employees. Members are appointed by the Hospital's Board, and you state that the Retirement Plan Committee also shares common religious bonds and convictions with the Roman Catholic Church.

You state that Code provisions concerning plan qualification are inapplicable to the Plan and you do not consider IRS jurisdiction to extend to the Plan; however, an administrator for the Plan apparently filed Form 5500 for the 1982 plan year with IRS and submitted premium payment forms for plan years 1981 and 1982 to the Pension Benefit Guaranty Corporation (PBGC). You state that you are interested in obtaining a refund of premiums from PBGC and that you believe the Department's opinion concerning church plan status under title I of ERISA will assist you. It is unclear whether you are also seeking a determination from IRS concerning its jurisdiction over the Plan in connection with your request for refund from PBGC.

In accordance with section 4(a) of title I of ERISA, title I of ERISA applies to any employee benefit plan established or maintained by an employer engaged in commerce or in any industry or activity affecting commerce, by an employee organization engaged in commerce or in any industry or activity affecting commerce, or by both, to provide benefits to employees and their beneficiaries except those plans specifically excluded therefrom by section 4(b) of title I of ERISA or otherwise excluded therefrom.

For purposes of the jurisdiction of the Department under title I of ERISA, we note that the term "industry or activity affecting commerce" has been given a liberal interpretation by the courts, that the term "commerce" in section 3(11) of title I of ERISA includes, among other things, communication between any state and any place outside thereof, and that the term "State" is defined in section 3(10) of title I of ERISA to include Puerto Rico. Moreover, the Department previously concluded that employee benefit plans are not excluded from coverage under title I of ERISA solely by virtue of being established and maintained in Puerto Rico. See, for example, ERISA Opinion 78-06A (issued March 13, 1978) and ERISA Opinion 84-26A (issued June 18, 1984). Copies of these and other relevant advisory opinions are enclosed for your information.

However, as you know, section 4(b)(2) of title I of ERISA excludes from coverage under title I of ERISA any plan which is a church plan as defined in section 3(33) of title I of ERISA. The term "church plan" is defined in section 3(33) of ERISA, in pertinent part, as:

(33)(A) ... a plan established and maintained (to the extent required in clause (ii) of 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 1954.

* * *

(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 1954 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 1954 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....

Based on the information you submitted and on your representation that if subject to IRS jurisdiction the Hospital would be a tax-exempt organization under Code section 501, it is the

position of the Department that the Pension Plan for Employees of the Hospital is a church plan within the meaning of section 3(33) of ERISA. Accordingly, such a pension plan would be exempt from coverage under title I of ERISA pursuant to section 4(b)(2) of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Elliot I. Daniel
Acting Assistant Administrator for Regulations and Interpretations

Enclosures