



March 8, 1994

Mr. John P. Gallagher  
Schubert, Bellwoar, Mallon & Walheim  
1400 Two Penn Center Plaza  
Philadelphia, Pennsylvania 19102-1890

**94-06A**  
ERISA SECTION  
3(33),4(b)(2)

Dear Mr. Gallagher:

This is in reply to your correspondence on behalf of Sacred Heart Manor (hereinafter, the Manor) in Philadelphia, Pennsylvania, a nursing home of the Carmelite Sisters for the Aged and Infirm (hereinafter, the Order). Your correspondence concerns applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concerning whether benefit arrangements for employees of the Manor are church plans within the meaning of section 3(33) of Title I of ERISA.

Your correspondence and the accompanying documents contain the following facts and representations. The Order is a religious congregation of women organized within the Roman Catholic Church (hereinafter, the Church). Members of the Order take vows of poverty, chastity, and obedience. Further, the Order is governed by a superior general and four general councillors who are members of the Order (hereinafter, the Order's governing body). One of the Order's main purposes is caring for the sick and infirm through works of a charitable nature. To fulfill its purpose, the Order operates nursing homes such as the Manor.

You represent that the Manor is organized as a Pennsylvania nonprofit, membership corporation. You also indicate that the Manor is subordinate to the Church primarily through the Manor's control by the Order and that, to a lesser extent, the Manor is directly subordinate to the Church. First, the Manor is subordinate to Church through the Order because the Order's governing body serves as the corporate members of the Manor and because the Order's governing body, acting as the Manor's corporate members, elects and may remove all but one of the directors on the Manor's board of directors (hereinafter, the Manor Board). Second, the Manor is directly subordinate to the Church because the Church controls the one director on the Manor Board not subject to the Order's control. That director serves ex officio on the Manor Board through his or her selection to occupy the position of director of social services for the Archdiocese of Philadelphia.<sup>1</sup>

The Manor and the Order are listed in The Official Catholic Directory (P.J. Kenedy & Sons, 1992). Accordingly, the group tax exemption letter issued to the United States Catholic Conference by the Internal Revenue Service (hereinafter, IRS) pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code) appears to include the Order and the Manor.

The Manor employs individuals in connection with its operation of a nursing home, and its eligible employees may participate in the Manor's employee benefit programs. The Manor's benefit programs for its employees include both pension benefit arrangements and welfare benefit arrangements. Eligible employees of the Manor may participate in a money purchase pension plan, a retirement annuity arrangement intended to meet the requirements of Code section 403(b), health benefits, dental, benefits, and employee assistance program,<sup>2</sup> a life insurance plan, and a prescription drug plan for employees of the Manor who are not union members (hereinafter, collectively, the Plans).<sup>3</sup>

A Pension Committee (hereinafter, the Committee) administers the Plans. The Committee is appointed by the Manor Board, and only members of the Order may be appointed to the Committee. The Committee now consists of two members of the Order.

To further document your request, you submitted a private letter ruling that IRS issued on August 30, 1990. The private letter ruling concludes that the Plans are church plans within the meaning of section 414(e) of the Code.

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 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 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 health care ministries it performs. Furthermore, the Order is exempt from tax pursuant to section 501(c)(3) of the Code pursuant to its listing in the Directory, 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 because the Order clearly shares common religious bonds and convictions with the Church.

The Church retains control over the Manor through the Order because the Order's governing body serves as the Manor's corporate membership and because the Order's governing body, as the Manor's corporate membership, appoints the directors on the Manor Board, excepting a single director who is a Church representative. Further, direct control of the Manor by the Church is evidenced by the Church's appointment of its representative who serves ex officio as a director on the Manor Board. In addition, the presence of members of the Order serving as the Manor's corporate membership and the Manor's listing in the Directory assure the Manor's adherence to the tenets and teachings of the Church and thus evidence that the Manor shares common religious bonds and convictions with the Church. Consequently, the Manor is "associated with" the Church within the meaning of section 3(33)(C)(iv). Also, pursuant to its listing in the Directory and the corresponding group exemption that IRS granted to the Church, the Manor is exempt from tax within the meaning of 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 Manor are employees of an organization that is a civil law corporation and that 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); and the Church, as employer, is deemed to have established and to maintain the Plans.

In addition to the above reason for concluding that the Plans meet the church plan definition in section 3(33), the Plans may be considered church plans because they are administered by the Committee. First, it appears that the Committee's principal purpose or function is administration of the Plans. It also appears that the Committee is controlled by the Church through the Order because the Manor Board appoints the Committee's members, because the Manor Board is, in turn, controlled by the Church and the Order (as discussed above), and because only members of the Order serve on the Committee. In addition, the presence of members of the Order on the Committee assures the Committee's adherence to the tenets and teachings of the Church and thus evidences 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 retirement and 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 opinion of the Department that the Plans for individuals whose employment is with the Manor constitute church plans within the meaning of section 3(33)(A) of Title I of ERISA by operation of sections 3(33)(C)(iii) and sections 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 Plans are not required to comply with the provisions of Title I of ERISA as administered by the Department.

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 it may be advisable to seek the views of IRS concerning requirements applicable to the health benefit arrangements among the Plans pursuant to the Consolidated Omnibus Reconciliation Act of 1985.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

<sup>1</sup>The Archdiocese of Philadelphia is a geographical and hierarchical division of the Church.

<sup>2</sup> Materials submitted with your request indicate that the Manor established and maintains its employee assistance program to provide employees with mental health counseling by trained personnel. The Department's advisory opinions (for example, ERISA Opinion 83-35A) have interpreted the employee welfare benefit plan definition to include such programs.

<sup>3</sup> For purposes of this opinion, the term "Plans" does not include the following arrangements that you describe: a separate, jointly administered prescription drug arrangement for Manor employees who are union members (hereinafter, the Union Drug Plan); paid leave that the Manor provides for its employees for various reasons; and credit union membership for Manor employees. Payments from an employer's general assets to an employee on leave and the opportunity to join a credit union are not benefits that ERISA covers. It appears that the Union Drug Plan covers union members employed by employers not related to the Church, in addition to Manor employees who are union members, and it is not clear whether the Manor exercises control over the Union Drug Plan. Moreover, the IRS private letter ruling you submitted on behalf of the Plans (discussed below) did not apply to the Union Drug Plan. Accordingly, this advisory opinion does not apply to those arrangements.