

DRAFT

Sample Comment Letter to IRS

Internal Revenue Service
Attention: EP Letter Rulings
P.O. Box 27063
McPherson Station
Washington, DC 20038

Re: Request for church plan ruling by [Name of Employer] for the [Name of Plan], EIN#_____

To the Internal Revenue Service:

I have been a participant in the [name of plan] for [specific number] years. I recently received a notice from my employer informing me that it intends to ask the Internal Revenue Service for a ruling that the [name of plan] is a “church plan.” The notice says that if this ruling request is granted I will lose all protections provided by the federal private pension law and that I may contact the IRS to voice my concerns.

I am writing to tell you that the [name of plan] is not, and has never been, a “church plan” and what it would mean to me if the IRS grants my employer’s request to become a church plan. In addition, I would like to have the opportunity to make an oral presentation to the IRS about this very important matter.

The reasons that [name of plan] should not be granted “church plan” status are:

1. The [name of plan] was not established by a church and is not (and has never been) maintained by a church. The [name of plan] was established and has been maintained at all times by [name of employer] for its employees. [Name of employer] is a nonprofit association, hospital, school that [describe your employer does.]
2. The [name of plan] is not maintained by an organization whose principal purpose is the funding or administration of a retirement plan. The plan is maintained by [name of employer] whose principal purpose is [providing health and medical services/running a school/operating a community center/sponsoring an association].
3. When I started work at [name of the employer] in [year] the [name of plan] gave me a booklet that told me that it was paying premiums to the Pension Benefit Guaranty Corporation to insure my pension. That booklet and other booklets, statements, and oral communications over the years told us that we were protected by the federal pension law, ERISA. To my knowledge the [name of plan] has at all times been maintained as an ERISA plan.

I am worried that my pension and future retirement security will be at risk if the IRS grants the “church plan” ruling requested by [name of employer]. That is because the [name of plan] is currently

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underfunded, which I've been told means that it does not have enough money to pay all promised benefits. If the ruling request is granted and [name of employer] were to terminate the plan, I could lose most or all of the benefits I worked [number] years as [a name of occupation] to earn.

Throughout my working years, I considered the pension to be an important part of my pay package and it was a reason that I continued to work at [name of employer.] I am [age] years old and do not have the time or ability to start earning a pension all over again. My Social Security benefits will not be enough to live on in retirement and I do not have enough in savings to last throughout my retirement years. If you grant the [name of employer's] ruling request, I will not be able to pay my bills when I retire. Please deny the request.

Thank you.

[Signature]

Printed name

Address

Phone number

e-mail address]

Part III

Administrative, Procedural and Miscellaneous

26 CFR 601.201: Rulings and determination letters
(Also, Part I, § 414)

Rev. Proc. 2011-44

SECTION 1. PURPOSE

The purpose of this revenue procedure is to supplement the procedures for requesting a letter ruling under § 414(e) of the Internal Revenue Code (Code) relating to church plans. This revenue procedure modifies Rev. Proc. 2011-4, 2011-1 I.R.B. 123, to require that plan participants and other interested persons receive a notice in connection with a letter ruling request under § 414(e) for a qualified plan, to require that a copy of the notice be submitted to the Internal Revenue Service (IRS) as part of the ruling request, and to provide procedures for the IRS to receive and consider comments relating to the ruling request from interested persons.

SECTION 2. BACKGROUND

Section 414(e) 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 tax under § 501 (church plan). For purposes of § 414(e), an employee of a church or a convention or association of churches includes an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under § 501 and which is controlled by or associated with a church or a convention or association of churches.

Section 1.414(e)-1 of the Income Tax Regulations provides that a church plan is a plan established and at all times maintained for its employees by a church or by a convention or association of churches which is exempt from tax under § 501(a), provided that the plan otherwise meets the requirements of the regulations.

To qualify under § 401(a), a retirement plan must meet certain requirements, including the minimum participation requirements under § 410(a), the minimum coverage requirements under § 410(b), and the minimum vesting requirements under § 411. A church plan (for which no special election described below has been made (nonelecting church plan)) is ordinarily not subject to various requirements that apply to tax-qualified plans under § 401(a) and is not covered by the Employee Retirement Income Security Act of 1974 (ERISA).

Thus, Code provisions that do not apply to a nonelecting church plan include § 410 (relating to minimum participation standards), § 411 (relating to minimum vesting standards), § 412 (relating

to minimum funding standards for pension plans), and § 4975 (relating to prohibited transactions). In addition, the flush language at the end of § 401(a) provides that paragraphs (11), (12), (13), (14), (15), (19), and (20) of § 401(a) do not apply to nonelecting church plans. These paragraphs relate to joint and survivor annuities, mergers and consolidations, assignment or alienation of benefits, time of benefit commencement, certain social security increases, withdrawals of employee contributions, and distributions after plan termination, respectively.

Under section 4(b)(2) of ERISA, a nonelecting church plan is excluded from coverage under Title I of ERISA. Thus, for example, it is not subject to ERISA's rules governing reporting, disclosure, and fiduciary conduct. In the case of a defined benefit pension plan, the plan is also not covered by the insurance provisions of Title IV of ERISA, which provides for certain benefit guarantees by the Pension Benefit Guaranty Corporation (PBGC) in the event of termination of an underfunded pension plan. These results are not limited to a church plan whose only participants are employees of a church, but may also in some cases include substantial numbers of employees of certain affiliated entities who are participants in a church plan as defined in § 414(e).

A nonelecting church plan is instead primarily subject to certain qualification requirements that pre-date the enactment of ERISA. The plan is treated as a tax-qualified plan only if the plan satisfies the participation, vesting, and funding requirements of the Code as in effect prior to ERISA.

Section 514(a) of ERISA generally provides that ERISA supersedes state laws that relate to an employee benefit plan described in section 4(a) of ERISA and not exempt under section 4(b) of ERISA. A nonelecting church plan is exempt under section 4(b) of ERISA. Thus, state laws that relate to an employee benefit plan generally would apply to the nonelecting church plan.

Section 410(d) permits an election to be made under which a church plan would be subject to the same requirements as apply to other qualified plans (electing church plan). Section 1.410(d)-1 of the Income Tax Regulations provides that the election is irrevocable and may be made only by the plan administrator and only in the manner provided in the regulations. If the election is made, the plan must comply with the applicable provisions of the Code. In addition, an electing church plan would be covered by and subject to Title I and, if a defined benefit pension plan, Title IV of ERISA.

Rev. Proc. 2011-4 contains procedures for an applicant to submit a letter ruling request that a qualified plan is a church plan under § 414(e). Although a church plan is not required to have a favorable letter ruling from the IRS, a letter ruling would ordinarily confirm a plan's status for tax purposes, as noted in Rev. Proc. 2011-4, section 4. Additionally, other agencies may require the applicant to have an IRS letter ruling. Appendix B of Rev. Proc. 2011-4 contains a checklist to comply with the general procedures for all such ruling requests. Appendix E contains an additional checklist applicable to church plan ruling requests. Rev. Proc. 2011-4 does not require any notice to interested persons prior to issuing a letter ruling with respect to a church plan under § 414(e).

Because a nonelecting church plan is exempt from certain requirements under the Code and is not subject to ERISA, the IRS has determined that advance notice should be given to interested persons, with an opportunity for interested persons to comment, before a letter ruling is issued on a church plan under § 414(e). Accordingly, in the case of a nonelecting church plan, the IRS will not issue a letter ruling that a qualified plan (which, for this purpose, means a § 401(a) plan, a § 403(a) insurance annuity plan, and a § 403(b) plan) is a church plan unless the notice requirements of section 3 of this revenue procedure have been met.

SECTION 3. NOTICE TO PARTICIPANTS, BENEFICIARIES, ALTERNATE PAYEES, AND EMPLOYEE ORGANIZATIONS

.01 General Requirements. The applicant must give notice to interested persons that a letter ruling under § 414(e) on behalf of a church plan will be submitted to the IRS. A copy of such notice must be submitted to the IRS as part of the ruling request.

.02 Information in the Notice. The notice must include the information set forth in the Model Notice attached as an appendix to this revenue procedure. However, information that is not applicable should be deleted. For example, in the case of a plan that is not a defined benefit plan, the notice should omit any information relating to the insurance protection provided by the PBGC (see references to PBGC in the notice). Similarly, the notice should be modified appropriately in the case of a § 403(b) plan (by deleting the reference to “the Code relating to retirement plans and with” in the paragraph under the heading “What is the Effect of an Election to be Subject to ERISA?”). In addition, if the notice is posted under section 3.05 below, it must provide that the interested person may request and receive the applicable notice on paper from the applicant at no charge.

While the notice may include additional information if that information is necessary or helpful to interested persons to understanding the information in the Model Notice, the notice should not have the effect of misleading or misinforming recipients or of distracting recipients from the information in the Model Notice.

.03 New Ruling Requests. Except as provided in section 3.04, the applicant must submit a copy of the notice to interested persons to the IRS containing the information under section 3.02 along with a statement that such notice was provided. The statement must specify the date or dates the notice was provided, and the date must be within 30 days before the letter ruling request is submitted to the IRS.

.04 Pending Ruling Requests. For a ruling request pending with the IRS on September 26, 2011, the applicant must submit a copy of the notice to interested persons to the IRS containing the information under section 3.02 along with a statement in a cover letter referencing the pending ruling request and stating the date or dates on which such notice was provided. This date must be within 60 days after September 26, 2011. The notice to interested persons must be in substantially the form set forth in the Model Notice attached as an appendix to this revenue procedure, but modified to specify that the letter ruling request has already been submitted to the IRS.

If an applicant for a pending letter ruling request chooses not to provide the notice to interested persons in connection with the letter ruling request, the applicant should notify the Service in writing within 60 days after September 26, 2011. The Service will then decline to rule, and the applicant's user fee will be refunded. If an applicant does not timely respond by notifying the IRS in the manner set forth under this section 3.04, the Service may consider the ruling request withdrawn and the user fee might not be refunded.

.05 Reasonable Effort. If the applicant makes a reasonable effort to satisfy the notice rules of this section 3, failure of one or more interested persons to receive the required notice will not cause the applicant to fail the notice requirement. Mere posting of the notice on a bulletin board is not sufficient to constitute a reasonable effort to satisfy this notice requirement, unless (a) the notice is prominently displayed on a bulletin board at a principal place of employment, (b) the bulletin board is regularly and actively used for a wide variety of purposes by employees who are plan participants, and (c) notice is given to all other interested persons by other methods that constitute a reasonable effort to satisfy the notice requirement.

.06 Modification of Prior Revenue Procedures. This revenue procedure modifies Rev. Proc. 2011-4 (and any applicable predecessor revenue procedure) by adding a notice requirement for ruling requests under § 414(e) involving church plans, and requiring that an applicant represent whether the plan is a nonelecting church plan.

.07 Interested Person. For purposes of this section 3, the term interested person means each plan participant, beneficiary, or alternate payee (within the meaning of § 414(p)(8)), and any employee organization representing employees who are plan participants. In the case of a plan covering more than one employer, the term interested person also includes each contributing employer other than the applicant.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for all ruling requests received after September 26, 2011, and ruling requests pending with the IRS as of September 26, 2011.

SECTION 5. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2011-4 (and any applicable predecessor revenue procedure) is modified.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. sec. 3507) under control number 1545-1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 3. This information is required to inform interested persons of the significance of being a nonelecting church plan in order to evaluate and process a request for a letter ruling that a plan is a church plan under § 414(e). The likely respondents are participants, beneficiaries, alternate payees, and employee organizations.

The estimated total annual reporting burden is 60 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 to 3 hours, depending on individual circumstances, with an estimated average burden of 2 hours. The estimated number of respondents and/or recordkeepers is 30.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. sec. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Sherri M. Edelman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 or email Ms. Edelman at RetirementPlanQuestions@irs.gov.

APPENDIX

MODEL NOTICE TO INTERESTED PERSONS OF THE REQUEST FOR AN IRS RULING ON A RETIREMENT PLAN'S STATUS AS A CHURCH PLAN

WHY ARE YOU RECEIVING THIS NOTICE?

You are receiving this notice because a letter ruling request will be submitted by [INSERT PLAN SPONSOR'S NAME AND EIN] to the Internal Revenue Service (IRS) for the [INSERT PLAN NAME] [INSERT PLAN NUMBER, IF APPLICABLE] for the plan year beginning [INSERT DATE]. The applicant requests the IRS to determine that the plan is a church plan under § 414(e) of the Internal Revenue Code (Code).

The applicant has represented that a special election (described below, relating to § 410(d) of the Code) has not been made. Therefore, the IRS requires that this notice be provided to you.

This notice informs you that a church plan under § 414(e) of the Code is generally not required to comply with many rules that apply to other retirement plans. Thus, those protections and rights under federal law are not required to be provided to participants and other interested persons. This notice also informs you that you may give the IRS comments.

WHY DOES CHURCH PLAN STATUS MATTER?

In general, a church plan is a plan established and at all times maintained for its employees by a church or by a convention or association of churches which is exempt from tax under Code § 501(a). A church plan is generally not subject to various requirements that generally apply to retirement plans under federal law. Instead, the plan is primarily subject to certain qualification requirements that pre-date the enactment of the Employee Retirement Income Security Act of 1974 (ERISA).

The applicant is representing that this plan is a church plan that is exempt from ERISA. This means that the plan is not required to provide certain protections and rights to plan participants. The protections applicable to ERISA-covered retirement plans that a church plan is not required to provide include the following:

- A participant's eligibility to join the plan cannot be delayed past a stated period of time
- A participant's entitlement to fully vested benefits must be set forth in schedules depending on years of service, and cannot be delayed past a stated period of time
- The plan may not generally be amended to reduce previously earned benefits
- Specific minimum funding requirements apply for pension plans
- A participant has the right to bring suit under federal law for payment of benefits, fiduciary violations (such as inappropriate management of plan assets or impermissible self-dealing), and failure to receive a statement of benefits and other plan information
- A participant has the right to be notified about certain changes in the plan, and to obtain a copy of plan documents and certain reports filed with the government
- The insurance protection provided by the Pension Benefit Guaranty Corporation (PBGC) that applies in the event of termination of an underfunded defined benefit pension plan.

If a church plan is excluded from ERISA coverage, state laws could independently provide protections and rights to participants, beneficiaries, and alternate payees. However, this would depend on the applicable state law.

Further, if a church plan is excluded from ERISA coverage, a sponsor of the plan may choose to provide similar protections to those provided under ERISA and the Code (though PBGC insurance protection would not be available). However, the plan might be able to cease providing those protections (for future benefits or previously earned benefits) at any time, to the extent applicable state law does not prohibit such action. Also, the plan administrator is not precluded from making an election under § 410(d) (as discussed below) at a later time, in which case the plan would then become subject to ERISA and to the provisions of the Code that generally apply to tax-qualified retirement plans (and any applicable state law protection would then cease to apply).

WHAT IS THE EFFECT OF AN ELECTION TO BE SUBJECT TO ERISA?

The plan administrator of a church plan is permitted to make an irrevocable election under

§ 410(d) of the Code under which the plan will be subject to all of the Code requirements that generally apply to tax-qualified retirement plans including the protections and rights listed in the preceding section. If the plan administrator of a church plan makes that election, the plan must comply with applicable provisions of the Code relating to retirement plans and with ERISA. The applicant has represented that no such election has been made with respect to this plan.

WHAT IS THE SCOPE OF A LETTER RULING?

Please be aware that, if the IRS issues a ruling stating that the [INSERT PLAN NAME] is a church plan under Code § 414(e), that ruling is based on the information provided and is limited to the plan's status as a church plan under § 414(e). The ruling will not make any determination regarding other events or actions, for example, regarding whether the plan administrator actually has or has not made an election under § 410(d) for this plan in the past. Also note that while a letter ruling from the IRS would confirm a plan's status as a church plan under § 414(e), a plan is not required to have a letter ruling from the IRS in order to be a church plan under § 414(e). However, other agencies may require the applicant to have an IRS letter ruling in order for the plan to be treated as a church plan.

YOU HAVE AN OPPORTUNITY TO COMMENT

The IRS will consider any written information submitted by plan participants or other interested persons that is relevant to the ruling request. Comments not relevant to this issue will be disregarded, but relevant information, such as whether the employer is or is not controlled by or associated with a church and whether an election has or has not been made under § 410(d), will be taken into account. The relevant information must be submitted within 60 calendar days from the date this notice is provided to interested persons and must include all identifying information relating to the plan and plan sponsor listed in the first paragraph of this notice (which includes the name and identifying number of the plan sponsor, the plan name, and the plan number, if applicable). Information may be sent to the following address:

Internal Revenue Service
Attention: EP Letter Rulings
P.O. Box 27063
McPherson Station
Washington, DC 20038

In addition to considering relevant written information from interested persons, the IRS may permit interested persons to participate in the decision-making procedure by making oral presentations at meetings to which interested persons are invited. However, it is solely within the discretion of the IRS as to whether or not there will be meetings to which interested persons are invited.

Due to the tax disclosure restrictions of § 6103 of the Code, the IRS is prohibited from providing any information with respect to the letter ruling request.

WHERE TO OBTAIN FURTHER INFORMATION

For further information on rules that apply to plans that are subject to ERISA (such as to a church plan that has made an election under § 410(d) of the Code), see the information on retirement plans provided by the Department of Labor at www.dol.gov/ebsa and the Pension Benefit Guaranty Corporation at www.pbgc.gov.

[NAME OF PLAN SPONSOR]

[NAME AND TITLE OF APPROPRIATE OFFICER]