



Church Pension Plan Exemption

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Church Plan Exemption – IRC 414(e)

- **No ERISA RIGHTS**
 - No disclosure rules
 - No vesting or other minimum standards rules
 - No claims and appeals procedures
 - No minimum funding rules
- **NO PBGC INSURANCE PROTECTIONS**
- **Participants usually unaware of lack of rights**



Church Plans Governed by State Law

- Common law fiduciary standards
- Common law contract claims
- State fraud and misrepresentation claims
- Jury trial possible
- Compensatory and punitive damages
- Because state law remedies are better than ERISA remedies some church-related health and disability plans take the position that they are ERISA plans.
- Most case law deals with this.



Examples of Different Church Pension Plan Situations

- **Catholic Diocese of Wilmington -**
 - Plan established and maintained by church and covers lay employees of church-related schools, etc.
 - Diocese in bankruptcy because of priest sex abuse lawsuits
 - Plan only about 12% funded. No new contributions by Diocese
 - Separate priests' plan protected by Canon law.



Examples of Different Church Pension Plan Situations (continued)

- **Augsburg Fortress Publishers – single employer plan & self administered plan**
 - Augsburg Fortress Publishers established by ELCA
 - Augsburg Fortress established own plan, which is “maintained” by 3-member Augsburg Fortress Personnel Committee
 - Covers only Augsburg Fortress copy editors and other employees
 - Plan terminated in March 2010. Separate multiple-employer ELCA plan is continuing



Examples of Different Church Pension Plan Situations (continued)

- **Saint Peter’s University Hospital – “two faced” plan**
 - Plan argues they “voluntarily” followed ERISA and paid PBGC premiums
 - Telling Participants they are “church plan” but still covered by PBGC – not possible
 - Applied for an IRS private letter ruling that it is a church plan
 - No action because of moratorium



Examples of Different Church Pension Plan Situations (continued)

- **Hospital Center at Orange NJ – “Halleluiaah” Plan**
 - Established by 100-year-old **secular** hospital and covered by ERISA and the PBGC for over 25 years
 - In 1998 affiliated with Archdiocese of Newark and “CONVERTED” to a church plan
 - Covers only Hospital Center at Orange employees
 - Received IRS private letter ruling that it is a church plan and got refund of PBGC premiums
 - Lawsuit filed, IRS imposed moratorium on church plan rulings
 - Three and a half years of benefits left in plan



Legislative History

- Original 1974 Church Plan Definition – very narrow exemption from ERISA
 - Exemption only for plans established by church for church employees: e.g. clergy and other employees of the church
 - Temporary exemption for church plans that covered employees of churches and church-related organizations: e.g. teachers in church-related schools, cemetery workers, etc. But, this temporary exemption was set to expire in 1982!



Legislative History (continued)

- 1980 MPPAA Amendments
 - Sen. Herman Talmadge (D.GA) and Southern Baptist Annuity Board had two goals
 - (1) Make 1974 temporary exemption permanent → solution: expand definition of church “employees”
 - (2) Allow church plans to be maintained by church “pension boards” → solution: include “organization...principal purpose language.”



Legislative History (continued)

- 1980 MPPAA Amendments – church plan amendment summary
 - Plans established and maintained by church/convention/association of churches for church “employees”
 - Plans established by church/convention/association of churches and plans maintained by organization associated with church for church employees and employees of church related organizations



Church Plan – Current Definition

IRC section 414(e) and ERISA section 3(33)

- (1) Church Plan -- A plan established and maintained ...for its employees (or beneficiaries) by a church/convention/association of churches
- (2) Plans treated as Church Plans – Church plan “includes a plan maintained by an organization, whether a civil law corporation or otherwise, that has its principal purpose or function the administration or funding of a plan or program for providing retirement or welfare benefits...for the employees of the church/convention/association of churches...if such organization is controlled by or associated with a church/convention/association of churches



Church Plan – Current Definition cont.

- This means - 2 possible types of church plan designs –
 - (1) Church plans – plans established and maintained by a church/convention/association of churches for church “employees”*
 - (2) Plans treated as church plans – plans [established by a church but] maintained by church pension boards for church “employees”*
- *Church employees include employees of organizations which are “controlled by or associated with” church/convention/ association of churches



“Controlled by or associated with”

- IRC 414(e)(3)(D) provides that an organization, whether a civil law corporation or otherwise, is ‘associated’ with a church or convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches
- “controlled by or associated with” requirement in two parts
 - (1) employee definition (IRC 414(e)(3)(B)) and
 - (2) if plan treated as church plans are administered by organizations who are also “controlled by or associated with” the church (IRC 414(e)(3)(A).



“Controlled by or associated with”

- Look to see if organization shares common religious belief and convictions with church
- Church has effective or actual control over organization



Plan is not a church plan if -

- It is established and maintained primarily for church employees who are also employed in connection with an unrelated business – IRC 414(e)(2)(A) Or
- It is established and maintained for church employees where a substantial number of participants are not “church employees.”



No Church Plan Filing Requirements

- Does a plan have to file anything to be a church plan?
 - NO
- What are Private Letter Rulings (PLR)?
 - Opinion letters between private party and IRS
 - Church plans not required to get PLR, but may ask for a PLR to try to protect themselves from future challenges



ERISA Election – IRC 410(d)

- Church plans can make IRC 410(d) election to be covered by ERISA
 - IRC 410(d) Election is irrevocable
 - Must file letter of intent to be covered to IRS with Annual Return
 - Must notify the PBGC
 - IRC 410(d) election is rare for pension plans – good for participants, but expensive for employers.
 - As noted previously – Church-related health and disability plans may make 410(d) election to escape State law remedies provisions.



IRS and DOL opinions throughout the years – unintended results

- Permits Stand-Alone Plans to be church plans – think AF, single employer and self-administered plans
- Permits “halleluiaah” plans – think Hospital Center at Orange – ERISA plans that “convert” into church plans so that they become exempt from ERISA



Current Definition revisited

- IRC section 414(e) and ERISA section 3(33) –
- (1) Church Plan -- A plan established and maintained ...for its employees (or beneficiaries) by a church/convention/association of churches
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IRS & DOL opinions

- IRS General Counsel Memorandum – GCM 39007 (1983): Allowed two things
 - (1) non-church (think AF situation) to establish “church plans”
 - (2) Allowed internal “committees” administer own benefit plans



IRS & DOL opinions

- 30 years of Private Letter Rulings
 - PLR 8851074 (1988): 1 person committee considered “organization”
 - PLR 9525061 (1995): conversion plan allowed as long as design implemented
 - PLR 200313019 (2003): IRS suggested if plan set up a “committee” to administer plan, then will be “treated as church plan”



IRS and DOL continued

- NO action needed to be a “church plan”
- But, could request PLR church plan ruling for safeguard
 - But, participants wouldn’t know if plan requested church plan ruling: e.g. HCO conversion



Comparison to Other Exemptions

- Social Security Tax Exemption
 - Ministers and members of religious orders
 - Employers and employees where both are members of a religious faith opposed to Social Security Tax
- Employment Discrimination Law Exemption
 - Only applies to issues involving employment decisions based on religious beliefs