



March 17, 1994

Mr. Arnold B. Kogan
Goldberg, Katzman, & Shipman, P.C.
320E Market Street
Strawberry Square
Harrisburg, Pennsylvania 17106-1266

94-10A
ERISA SECTION
3(33),4(b)(2)

Dear Mr. Kogan:

This is in reply to your correspondence on behalf of Messiah Home (hereinafter, Messiah), a retirement community located in Mechanicsburg, Pennsylvania, that is an institution of the Brethren in Christ Church (hereinafter, the Church). Your correspondence concerns applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concluding that benefit arrangements for Messiah's employees are church plans within the meaning of section 3(33) of Title I of ERISA.

Your correspondence and the accompanying documents provide the following facts and representations concerning the Church's organization, its control of Messiah, and Messiah's benefit arrangements for its employees.

You state that the ultimate authority governing the Church is its general conference (hereinafter, the General Conference), which is a meeting of representatives from six Church conferences in North America that occurs every two years.¹ You further indicate that, between meetings of the General Conference, a Church board of administration and several general Church boards are empowered by the General Conference to carry on the Church's work and supervise its institutions.

One of the Church's general boards, the board for brotherhood concerns (hereinafter, the Brotherhood), directs the Church's relief work, family services, homes for senior citizens, fostercare, and peace and social justice activities. Under the authority of the General Conference, the Brotherhood also assists in supervising Messiah.

You represent that Messiah was established by the Church to provide retirement and home health services care, including charitable care to those unable to pay.² You further represent that Messiah's organization and financing, its Church directory listing, and the preference it shows for Church members demonstrate its subordination to the Church.

First, you indicate that Messiah's board of trustees, consisting of seven trustees headed by a chairperson (hereinafter, the Messiah Board), is controlled by the General Conference and the Brotherhood. Specifically, the Brotherhood must recommend, and the General Conference must approve, all individuals to serve as trustees on the Messiah Board.³ Also, the Brotherhood itself appoints one trustee to the Messiah Board.

Second, you represent that the General Conference directly and through the Brotherhood controls Messiah's finances. Specifically, Messiah receives partial funding from the Brotherhood,⁴ and Brotherhood reports to the General Conference on Messiah's financial condition. The General Conference must approve Messiah's report of financial condition and, on approving the report, publishes it in its minutes. Further, the General Conference will acquire Messiah's assets on dissolution.

Third, you emphasize Messiah's listing as a special ministry in the Church's denominational directory. You represent that the directory constitutes the Church's official published listing of its ministries.

Fourth, you describe the preference Messiah shows for Church members. Specifically, only Church members serve as Messiah Board trustees, although you state that Church membership is not a requirement for trustees on the Messiah Board.

Both the General Conference and Messiah are Pennsylvania nonprofit corporations. Further, you represent that the Internal Revenue Service (hereinafter, IRS) accorded the General Conference and Messiah tax exempt status pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code).

You represent that eligible employees of Messiah participate in the following benefit arrangements: a pension plan (hereinafter, the Pension Plan), a tax sheltered annuity program,⁵ health benefit arrangements (hereinafter, the Messiah Group Health Plan), a group dental insurance plan, a group term life and accidental death and dismemberment insurance plan, and a supplemental life insurance plan (hereinafter, collectively, the Plans).⁶

You further represent that the Pension Plan has not made an election under section 410(d) of the Code to be covered by Title II of ERISA.⁷ You also specify that, of the Messiah Group Health Plan's total of 213 participants, 12 participants are employed by a nonprofit child care center operating on the grounds of Messiah, namely, the Children's Family Center (hereinafter, the Center).⁸

You represent that an Employees' Pension Plan and Welfare Benefits Plan Administration Committee (hereinafter, the Committee) administers the Plans. The chairperson of the Messiah Board appoints the Committee, which comprises three Messiah Board trustees and three Messiah staff members. The Committee's sole function is administration of the Plans.

Among the material you submitted to document your request for an advisory opinion is a private letter ruling that IRS issued to Messiah on November 6, 1992. That private letter ruling concludes that the Plans, as well as a flexible benefit arrangement that Messiah provides for its employees,⁹ 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:

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.

(B) The term "church plan" does not include a plan --

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1986), or

(ii) if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).

(C) For purpose 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 General Conference is a "church" or "a convention or association of churches" within the meaning of section 3(33). It also appears that the General Conference, a civil corporation, is exempt from tax pursuant to section 501(c)(3) of the Code.

Further, Messiah is a civil law corporation controlled by the General Conference directly and through the Brotherhood, which is a Church board that acts for the General Conference between its biennial meetings. Messiah is controlled directly by the General Conference for all the following reasons: the General Conference must approve individuals for appointments to serve as trustees on the Messiah Board; it must approve and publish Messiah's report of financial condition; and, if Messiah is dissolved, it will acquire Messiah's assets. Messiah is controlled by the General Conference through the Brotherhood for all the following reasons: the Brotherhood provides partial funding for Messiah; it reports on Messiah's financial condition to the General Conference; it recommends individuals to the General Conference for approval as trustees on the Messiah Board; and it appoints one Messiah Board trustee.

Further, because they assure that Messiah adheres to the tenets and teachings of the Church the following factors evidence that Messiah shares common religious bonds and convictions with the Church: Messiah is controlled by the Church's General Conference, both directly and through the Brotherhood (as described above); Messiah is listed as a special ministry in the Church's denominational directory; and Church members serve as trustees on the Messiah Board. Consequently, Messiah is "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA. Finally, Messiah is exempt from tax pursuant to section 501(c)(3) of the Code.

Accordingly, it is the view of the Department of Labor (hereinafter, the Department) that individuals whose employment is with Messiah are employees of an organization that is a civil law corporation and 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 their employer 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 by operation of section 3(33)(C)(i) of Title I of ERISA because they are administered by the Committee, which further assures that the Church is deemed to maintain the Plans. Section 3(33)(C)(i) applies to the Plans because the principal purpose or function of the Committee is administration of plans for the provision of employee retirement and welfare benefits and because the Committee is controlled by and "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA. It appears that the Committee is controlled by the Church because Committee members are appointed by the chairperson of the Messiah Board, which is controlled by the General Conference both directly and through the Brotherhood (as described above). Furthermore, because the Church's control of the Committee (as described above) and the presence on the Committee of three Messiah Board trustees, all of whom are Church members, assure that the Committee adheres to the tenets and teachings of the Church, they 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) of Title I of ERISA.

Finally, we have considered issues raised by the inclusion of employees of the Center in the Messiah Group Health Plan. It appears that participation in the Plan by the Center's 12 employees, compared with a total of 213 individuals you describe as participating in the Messiah Group Health Plan, does not exclude the Plan from the section 3(33) "church plan" definition by operation of sections 3(33)(B)(i) or (ii) of Title I of ERISA.

For the above reasons and based on your representations, it is the opinion 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 ERISA section 3(33)(C)(iii). In addition, ERISA section 3(33)(C)(i) appears to describe the Plans. 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 Budget Reconciliation Act of 1985.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations

¹ The six conferences, which are geographical and hierarchical divisions of the Church, are Atlantic, Allegheny, Canadian, Central, Midwest, and Pacific.

² Messiah was originally incorporated in 1896 under the name Messiah Rescue and Benevolent Home. Messiah's name was changed in 1964, and in 1979 it began to use the name Messiah Village. Messiah also moved from Harrisburg, Pennsylvania, to Mechanicsburg, Pennsylvania, in 1978.

³ Between meetings of the General Conference, vacancies on the Messiah Board are filled by the board of administration of the Church.

⁴ Messiah also receives fees from its residents and accepts bequests and donations.

⁵ We express no opinion in this letter whether, absent exclusion from Title I of ERISA as a "church plan," Messiah's tax sheltered annuity program would meet the definition of an "employee pension benefit plan" in section 3(2) of Title I of ERISA.

⁶ The opinions expressed in this letter apply solely to Messiah's benefit plans for its own employees and do not apply to dental, supplemental life insurance, or life and accidental death and disability insurance arrangements offered by associations of hospitals or of homes for the aging, their subsidiaries, service organizations, or other related organizations to Messiah's employees as well as to employees of other unrelated employers.

⁷ Section 4(b)(2) of ERISA excludes from Title I coverage church plans as defined in section 3(33) of Title I of ERISA, excepting only those plans that have made the Code section 410(d) election.

⁸ You represent that the Center offers Messiah's employees discounted child care and offers Messiah's residents, among others, the opportunity to participate in its intergenerational programs. Further, you represent that Messiah supplies food services for children who receive care in the Center.

⁹ Messiah allows its employees to reduce their salaries on a pre-tax basis through its flexible benefit arrangement to pay for health benefits. By enrolling in Messiah's flexible benefit arrangement, Messiah employees may gain tax advantages but do not receive any additional ERISA-covered welfare benefits (other than those described above). Accordingly, Messiah's flexible benefit arrangement is not included in the opinions expressed in this letter.