



April 4, 1994

Ms. Mary M. Potter  
Matthews & Branscomb  
One Alamo Center  
106 S. St. Mary's Street  
San Antonio, Texas 78205-3692

94-12A  
ERISA SECTION  
3(33), 4(b)(2)

Dear Ms. Potter:

This is in reply to your correspondence on behalf of Morningside Ministries (hereinafter, Morningside), which is an institution organized by the Episcopal Diocese of West Texas, the Southwest Conference of the United Methodist Church, and the Southwest Presbyterian Church of San Antonio (hereinafter, collectively, the Churches). Specifically, you ask whether benefit arrangements for employees of Morningside are church plans within the meaning of section 3(33) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA).

Your correspondence and the accompanying documents contain the following facts and representations about Morningside's activities, its subordination to the Churches, and the benefit arrangements that Morningside provides solely for its employees.

Morningside was founded by the Churches to further their ministries to older persons. It provides housing for the elderly, including nursing homes and independent living facilities in San Antonio and other areas of Texas.<sup>1</sup>

Morningside is a nonmember, nonprofit corporation. It is governed by a 27-member board of directors (hereinafter, the Morningside Board). The Morningside Board has four groups of directors: each of the Churches is represented by a group of seven directors and a fourth group is composed of six "at large" directors.

One director in each group of seven serves "ex officio." The "ex officio" directors are the Bishop of the Diocese of West Texas, Episcopal Church in the U.S.A (hereinafter, the Episcopal bishop); the Bishop of the Southwest Texas Conference of the United Methodist Church (hereinafter, the Methodist bishop); and the Senior Pastor of First Presbyterian Church of San Antonio of the Presbyterian Church, U.S.A. (hereinafter, the Presbyterian senior pastor).

Excepting vacancies among the "ex officio" directors, any vacancies among the directors are filled by directors elected by the Morningside Board itself. In addition, the "ex officio" director in each group representing one of the Churches must ratify the election to fill a vacancy within the group. Further, to represent one of the Churches, an elected director must be one of its lay members. Also, although it is not required for election to the Morningside Board, several elected directors who represent one of the Churches are among its clergy.

Unlike elected directors on the Morningside Board, the six "at large" directors need not be members of any of the Churches. However, you represent that some "at large" directors are, in fact, among the clergy of religious organizations other than the Churches.

You further represent that the Churches and Morningside are recognized by the Internal Revenue Service (hereinafter, IRS) as organizations exempt from tax pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code).<sup>2</sup>

Morningside employs individuals in connection with providing housing for the elderly. It also has established and maintains benefit arrangements for its eligible employees. The benefit plans that Morningside provides solely for its own employees (hereinafter, collectively, the Plans) include insured health benefits, life insurance, dental benefits, long term disability benefits, and a "safety" plan. You represent that Morningside's "safety" plan provides its employees with medical benefits for "on the job" injuries and includes salary continuation benefits for employees with "on the job" injuries as well as cash awards for employees with excellent safety records.<sup>3</sup>

The Morningside Board has appointed one or more Administrative Committee(s) (hereinafter, the Committee(s)) to administer the Plans. The Morningside director of human resources and the Morningside director of finance serve on the Committee(s). Further, the Committee(s) exist for the exclusive purpose of administering the Plans.

You also submitted an IRS private letter ruling issued to Morningside on March 9, 1993. IRS concludes in the private letter ruling that the Morningside "safety" plan is a church plan within the meaning of section 414(e) of the Code. In addition, you represent that the administrative arrangements for the Plans are identical to the administrative arrangements for the Morningside "safety" plan.

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.

(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 or churches ....

It appears that, for purposes of your request for an advisory opinion, the Churches constitute one or more "churches" or "conventions or associations of churches" within the meaning of section 3(33). The Churches are also exempt from tax within the meaning of section 501(c)(3) of the Code.

It appears that Morningside is jointly controlled by the Churches because the Episcopal bishop, the Methodist bishop, and the Presbyterian senior pastor serve "ex officio" as directors on the Morningside Board and because, as "ex officio" directors on the Morningside Board, these officials are collectively empowered to ratify the election of more than a majority of the remaining directors on the Morningside Board and thus to control the Morningside Board's elections to fill any vacancies among its members. Morningside is also exempt from tax pursuant to section 501(c)(3) of the Code.

Further, Morningside is "associated with" the Churches, within the meaning of section 3(33)(C)(iv) of Title I of ERISA, because Morningside's adherence to the tenets and teachings of the Churches is assured by the Churches' joint control of Morningside (as described above); by the presence as directors on the Morningside Board of the Episcopal bishop, the Methodist bishop, and the Presbyterian senior pastor; and by the presence of one or more clergy who have been elected as directors to represent one of the Churches on the Morningside Board. Because these factors assure Morningside's adherence to the tenets and teaching of the Church, they also assure that Morningside shares common religious bonds and convictions with the Churches and, thus, that Morningside is "associated with" the Churches within the meaning of section 3(33)(C)(iv) of Title I of ERISA.

Accordingly, it is the view of the Department of Labor (hereinafter, the Department) that individuals whose employment is with Morningside are considered employees of an organization that is a civil law corporation and that 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 Churches are therefore deemed the employer of those individuals for purposes of the church plan definition in section 3(33).

In accordance with the church plan definition in section 3(33), the Churches are also deemed to maintain the Plans through the Committee(s), whose exclusive purpose is administration of retirement and welfare benefits for employees of a church and which are controlled by and "associated with" the Churches, thus meeting the requirement of section 3(33)(C)(i). The Churches control the Committee(s) because the Morningside Board, which is, in turn, jointly controlled by the Churches (as described above), appoints the members of the Committee(s). The Churches' joint control of the Committee(s) through the Morningside Board also assures adherence by the Committee(s) to the tenets and teachings of the Church, thus assuring that the members of the Committee(s) share common religious bonds and convictions with the Church. Accordingly, criteria for being "associated with" the Church in section 3(33)(C)(iv) of Title I of ERISA are satisfied by the Committee(s).

For the above reasons and based on your representations, it is the view 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 sections 3(33)(C)(i) and 3(33)(C)(iii) 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 and should inform plan participants accordingly.

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 the status of Morningside's health benefits arrangements for its employees pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) is within IRS jurisdiction.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

<sup>1</sup> Morningside owns and operates Morningside Manor, a nursing home; Chandler Memorial Home, a nursing home; and The Meadows, an independent living community for the elderly.

<sup>2</sup> You submitted correspondence issued by IRS in 1963 that granted Morningside Manor an exemption from tax pursuant to section 501(c)(3) of the Code and correspondence issued by IRS in 1976 and 1977 that renewed that exemption. Further, you represent that, notwithstanding its current use by one of Morningside's nursing homes, Morningside Manor was the corporate name under which Morningside operated until 1987 when it registered a change of corporate name.

<sup>3</sup> Morningside's "safety" plan appears, to some extent, to provide Morningside employees with benefits that are not among those enumerated in the definition of "employee welfare benefit plan" in ERISA section 3(1). Specifically, payments from Morningside's general assets for safety excellence awards would appear to constitute bonuses excluded from Title I coverage by regulations at 29 CFR §2510.3-2(b) and providing salary continuation payments from Morningside's general assets to employees unable to perform their duties due to medical reasons would appear to be a payroll practice excluded from Title I coverage by regulations at 29 CFR §2510.3-1(b)(2). Accordingly, the opinions expressed in this letter apply to Morningside's "safety" plan only to the extent that Morningside's establishment and maintenance of the "safety plan" provides its own employees with health benefits, which we assume for purposes of this opinion are not benefits mandated by state workers' compensation laws.