

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



September 30, 1996

96-19A
ERISA SEC. 3(33)

Ms. Barbara A. Breeding
Barbara Breeding & Associates, P.C.
11811 North Freeway, Suite 225
Houston, Texas 77060

Dear Ms. Breeding:

This responds to your request for an advisory opinion on behalf of Sisters of Charity of the Incarnate Word, Houston, Texas ("SCH"). You ask whether certain employee benefit plans ("Plans") sponsored by SCH 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. SCH was established by the Congregation of the Sisters of Charity of the Incarnate Word ("Congregation") to implement the Congregation's health care mission. The Congregation is a religious congregation of women ("Sisters") founded in 1866 to provide a health care ministry. It has been approved as a congregation of the Roman Catholic Church ("Church") and is devoted to the Church's religious, charitable and education ministries. Each member of the Congregation takes vows of obedience, chastity, and poverty.

The Congregation is under the direct control and spiritual guidance of the head of the Church. The Congregation is governed by a Rule and a Constitution that may be changed only with the approval of the Church, and is subject in its operations to the Code of Canon Law, as promulgated by the head of the Church. Any substantial property of the Congregation may not be disposed of without the approval of the head of the Church. The Congregation's leadership is comprised of the General Superior and the General Council of the Congregation as they are chosen from among the Congregation's membership from time to time by the Congregation.

The Congregation conducts its civil business affairs through the Congregation of the Sisters of Charity of the Incarnate Word, Houston, Texas ("CSC"), which is organized as a Texas nonprofit corporation with no members. The board of directors of CSC is comprised of the General Superior and the General Council of the Congregation.

SCH is organized as a nonprofit membership corporation under the laws of Texas. The members, who appoint the board of directors, are the General Superior and the General Council of the Congregation. The Articles of Incorporation of SCH state that SCH is organized exclusively for religious, charitable and educational purposes that are to be carried out in the context of the theology, philosophy and other teachings and norms of the Church.

SCH's health care mission in the United States is carried out through 21 health care centers ("Health Care Centers") and several associated organizations located in Texas, Louisiana, Arkansas, California, and Utah. Twelve of the Health Care Centers are divisions of SCH, which you identify as follows:

SCH SETX Health Care Region, Houston, Texas.
St. Elizabeth Hospital, Beaumont, Texas.
St. John Hospital, Nassau Bay, Texas.
St. Joseph Hospital, Houston, Texas.

St. Mary Hospital, Port Arthur, Texas.
 St. Michael Health Care Center, Texarkana, Texas.
 St. Michael Rehabilitation Hospital, Texarkana, Texas.
 Sisters of Charity/City of Houston Southwest Community Health Clinic, Houston, Texas.
 St. Joseph Home, Monroe, Louisiana.
 Regis Retirement Center, Waco, Texas.

The nine remaining Health Care Centers are separately incorporated as nonprofit corporations with SCH as the sole corporate member. They are:

St. Elizabeth Hospital of Houston, Houston, Texas.
 Sisters of Charity of the Incarnate Word, Shreveport, Louisiana, DBA Schumpert Medical Center.
 St. Bernardine Medical Center, San Bernardino, California.
 St. Frances Cabrini Hospital of Alexandria, Alexandria, Louisiana.
 St. Mary Medical Center, Long Beach, California.
 St. Michael Hospital of Texarkana, Texarkana, Arkansas.
 St. Patrick Hospital of Lake Charles, Lake Charles, Louisiana.
 St. Joseph Villa, Salt Lake City, Utah.
 Dubuis Hospital for Continuing Care, Inc., Alexandria, Louisiana ("Dubuis").

All of the associated organizations whose employees are covered by the Plans ("Associated Organizations") are integral parts of SCH and provide essential aspects of SCH's health care services, including, for example, a pharmacy, a recovery association, clinics, and claims administration. With one exception, the Associated Organizations are divisions or operations within SCH that do business under particular names. The exception is C.H. Wilkinson Physician Network ("Wilkinson"), which is separately incorporated. Wilkinson is a nonprofit corporation of which SCH is the sole corporate member. It was formed to provide the services of certain physicians within the SCH health system and currently employs 36 people. Under its bylaws, Wilkinson is charged with conducting its affairs according to the official teachings of the Church and the ethical and religious directives for Church health facilities promulgated by leaders of the Church in the United States.

The Congregation, CSC, SCH, and the Health Care Centers are organizations described in section 501(c)(3) of the Internal Revenue Code ("Code") and are exempt from federal income tax. All of these organizations, except Dubuis and Wilkinson, are listed in the Official Catholic Directory ("Directory"), the official directory of the Church, as being agencies of the Church.¹ Dubuis and Wilkinson have independently obtained letters from the Internal Revenue Service stating that they are exempt from tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code.

Under SCH's Articles of Incorporation, SCH and the Health Care Centers are and always will be instrumentalities of the Church. They are to be managed and directed according to the doctrines, disciplines, laws, rules and regulations of the Church, the constitutions, directives, resolutions and decrees of the Congregation, and the ethical and religious directives for Church health facilities promulgated by leaders of the Church in the United States. The articles of incorporation or the bylaws for CSC and each of the Health Care Centers contain similar provisions.

¹ It is the Department of Labor's understanding that the Internal Revenue Service has determined that any organization listed or appearing in the Directory is an organization described in section 501(c)(3) of the Code and exempt from tax under section 501(a) of the Code.

SCH and CSC have established and maintain the Plans for the benefit of the Sisters and the employees of the Congregation, SCH, the Health Care Centers, and the Associated Organizations. Specifically, you identify the Plans that are the subject of your request for a "church plan" opinion as follows:

- A. SCH Cash Balance Plan (an amendment and restatement of the Sisters of Charity of the Incarnate Word Retirement Plan)
- B. SCH Early Retirement Plan For Executives
- C. SCH Executive Deferred Compensation Program
- D. American Hospital Association Deferred Compensation Plan
- E. Sisters of Charity of the Incarnate Word Savings Plan
- F. SCH Executive Pension Restoration Plan
- G. SCH Executive Early Retirement Severance Plan
- H. SCH ExecuFLEX Deferred Income Account Plan
- I. Thrift Plan for Employees of Sisters of Charity - City of Houston Southwest Community Health Clinic, an Unincorporated Operating Division of Sisters of Charity of the Incarnate Word, Houston, Texas
- J. SCH Health Plan
- K. SCH Dental Plan
- L. SCH Short Term Disability Plan
- N. SCH Employee Group Term Life Insurance Plan
- O. SCH Dependent Life Insurance Plan
- P. SCH Accidental Death and Dismemberment Plan
- Q. SCH Health Care Spending Account Plan
- R. SCH Retiree Health Plan
- S. SCH Executive Salary Continuation Plan
- T. SCH Executive Severance Plan
- U. SCH ExecuFLEX Long-term Disability Plan
- V. SCH ExecuFLEX Supplemental Survivor Benefit Plan
- W. SCH ExecuFLEX Spouse Survivor Benefit Plan
- X. SCH Non-Qualified Supplemental Plan.

You represent that Plans A through I and X are employee pension benefit plans and Plans J through W are employee welfare benefit plans as those terms are defined in sections 3(2)(A) and 3(1) of ERISA, respectively. The Internal Revenue Service has determined that Plan A is a qualified plan within the meaning of section 401(a) of the Code. No election under section 410(d) of the Code has been made with respect to Plan A or any of the other pension plans identified above.²

The Plans are administered by two committees ("Committees" or individually "Committee") created by the SCH bylaws ("Bylaws"). The Employee Benefit and Retirement Committee is responsible for administering plans offered to employees without regard to compensation levels, including the Plans identified above at A,E,I through R, and X. The Executive Compensation Committee is responsible for administering executive compensation, including deferred compensation and benefits, and administers the Plans identified at B,C,D,F,G,H, and S through W. You state that each Committee is established in the Bylaws for the purpose of administering the plans under its charge

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

and that a principal function of each Committee is to serve as the plan administrator for those plans.³ The membership of both Committees is identical and consists of five individuals who are appointed by and serve at the pleasure of SCH's board of directors. The board of directors has the responsibility to oversee and supervise the Committees and must approve the Committees' major actions that exceed the authority delegated to them. The Committees may delegate their authority to agents who report to the Committees on actions taken and who may not make any modifications to the Plans that change the benefits philosophy.

To further document your request, you submitted a private letter ruling in which the Internal Revenue Service concluded that the Plans identified above at A and J through R 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 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 Congregation is an integral part of the Church by virtue of its religious and health care ministries. Furthermore, the Congregation is exempt from tax pursuant to section 501(c)(3) of the Code, is clearly controlled by

³ Section 6.2.5 of the Bylaws, however, states that the responsibilities of the Executive Compensation Committee include "tak[ing] action with respect to position evaluation, salary structure and adjustment, . . . and performance appraisal and review for executive management personnel within the SCH Health Care System." Based on your representations, we assume for purposes of this letter that a principal purpose of the Committee is to administer the Plans for which it has responsibility.

the Church, and is "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA because the Congregation shares common religious bonds and convictions with the Church.

Through the Congregation the Church controls CSC, SCH, the Health Care Centers, and the Associated Organizations. First, the Church controls CSC and SCH through the Congregation because the members of the Congregation's governing body (i.e., the General Superior and the General Council) serve as the board of directors of CSC and as the corporate members of SCH with powers to appoint SCH's board of directors. Second, the Church through the Congregation and SCH controls the Health Care Centers and the Associated Organizations because they are integral divisions or parts of SCH or nonprofit corporations of which SCH is the sole corporate member.

In addition, CSC, SCH, the Health Care Centers, and the Associated Organizations are "associated with" the Church, within the meaning of section 3(33)(C)(iv), because of factors that assure that they adhere to the tenets and teachings of the Church and thus evidence that they share common religious bonds and convictions with the Church. Those factors include Church control of CSC and SCH through the Congregation and Church control of the Health Care Centers and the Associated Organizations through the Congregation and SCH, as discussed above; Directory listings applicable to CSC, SCH, and specific Health Care Centers; participation by members of the Congregation, who serve as its General Superior and General Council, on the board of directors of CSC, as the corporate members of SCH, and through SCH in the corporate membership of those Health Care Centers that are incorporated and of Wilkinson. Also, CSC, SCH, the Health Care Centers, and the Associated Organizations are exempt from tax in accordance with section 501(c)(3) of the Code.

Accordingly, the Department of Labor (the Department) concludes that individuals whose employment is with CSC, SCH, the Health Care Centers, or the Associated Organizations are employees of organizations that are civil law corporations exempt from tax pursuant to section 501(c)(3) of the Code and that are 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 reasons for concluding that the Plans meet the church plan definition in section 3(33), the Plans may be considered church plans by operation of section 3(33)(C)(i) of Title I of ERISA because the Committees' administration of the Plans further assures that the Church is deemed to maintain the Plans. Section 3(33)(C)(i) applies to the Plans because a principal purpose or function of each of the Committees is administration of one or more of the Plans for the provision of employee retirement or welfare benefits and because the Committees are 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 Committees are controlled by the Church through the Congregation and SCH's board of directors, which appoints the members of both Committees and may remove them at will. Furthermore, the Church's control of the Committees through the Congregation and the SCH board of directors assures the Committees' adherence to the tenets and teachings of the Church and thus evidences that the Committees share common religious bonds and convictions with the Church. Consequently, the Committees are "associated with" the Church within the meaning of section 3(33)(C)(iv).

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 sections 3(33)(C)(iii) and 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.

Sincerely,

Susan G. Lahne
Chief, Division of Coverage
Office of Regulations and Interpretations