Internal Revenue Service

Number: **200110005**
Release Date: 3/9/2001
Index Number: 451.00-00

Department of the Treasury

Washington, DC 20224

Person to Contact:
Susan M. Lennon
Telephone Number:
(202) 622-6030
Refer Reply To:
CC:TEGE:EB:EC - PLR-125495-00
Date:
November 14, 2000

X =
Church =
Plan =
Board =

This is in reply to your letter dated April 28, 2000, and subsequent correspondence, on behalf of the Church. The Church has requested a ruling on the federal income tax consequences under sections 83 and 451 of the Internal Revenue Code with respect to the Plan.

The Church has established a nonqualified deferred compensation plan (the "Plan") for the benefit of its ordained ministers and lay employees. The Plan shall be administered by the Board. X reserves the right to amend, modify, terminate or discontinue the Plan at any time. You have represented to us that the Church is a church entity as defined in section 3121(w)(3)(A) of the Code. In addition, you represent that every entity whose ministers and lay employees will participate in the Plan is either a church entity as defined in section 3121(w)(3)(A) or a qualified church-controlled organization as defined in section 3121(w)(3)(B).

The Church will contribute a stated percentage of a participating employee's compensation based on whether the employee is a minister or lay employee. Participants may also elect to defer a stated percentage of their compensation per year under the Plan. No contributions can be made by a participant on an after-tax basis. All amounts contributed with respect to a participant are fully vested and nonforfeitable.

Under the Plan, a bookkeeping reserve account (the "Account") shall be established for the Employee. The Account shall be used solely as a device for the measurement and determination of the amount to be paid to the Employee in the future under the terms of the Plan. In accordance with the rules and procedures established by the Board, participants have the right to suggest an investment option in which the balance of each participant's Account will be deemed to be invested. The participant's suggestion is subject to Board approval.

At the time a participant first becomes eligible to participate in the Plan, the participant shall elect the form and timing that amounts shall be distributed to the participant from the options provided in the Plan.

The Board shall be the designated owner and beneficiary of investments acquired in connection with the Board’s obligations under the plan. The Church is not required to set aside any assets with respect to the Plan. Any assets actually held by the Church with reference to the Plan shall be and remain the sole property of the Church and shall be subject to the claims of the creditors of the Church and each affiliated church whose ministers or lay employees participate in the Plan.

Benefits under the Plan shall not be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, garnishment or encumbrance of any kind, by will, or by inter vivos instrument. Any attempt to alienate, sell, transfer, assign, pledge or otherwise encumber any such benefit payment shall not recognized by the Board. Any benefit payment due under the Plan shall not in any manner be liable for or subject to the debts or liabilities of a participant or the participant’s beneficiary.

Section 457 of the Code provides the rules governing the deferral of compensation by an individual participating in a deferred compensation plan of an eligible employer. Under section 457(e)(1)(B), a tax-exempt organization is an eligible employer covered by section 457. However, section 457(e)(13) provides that the term eligible employer does not include a church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

Section 83(a) of the Code provides that the excess (if any) of the fair market value of property transferred in connection with the performance of services over the amount paid (if any) for the property is includible in the gross income of the person who performed the services in the first taxable year in which the property becomes transferable or is not subject to a substantial risk of forfeiture.

Section 1.83-3(e) of the Regulations provides that for purposes of section 83, the term "property" includes real and personal property other than either money or an unfunded and unsecured promise to pay money or property in the future. Property also includes a beneficial interest in assets (including money) transferred or set aside from claims of the transferor's creditors, for example, in a trust or escrow account.

Section 451(a) of the Code and section 1.451-1(a) of the Regulations provide that an item of gross income is includible in gross income in the taxable year in which it is actually or constructively received by the taxpayer using the cash receipts and disbursements method of accounting. Under section 1.451-2(a) of the Regulations, income is constructively received in the taxable year during which it is credited to a taxpayer's account, set apart or otherwise made available so that the taxpayer may draw on it at any time. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Various revenue rulings have considered the tax consequences of nonqualified deferred compensation arrangements. Rev. Rul. 60-31, Situations 1-3, holds that a mere promise to pay, not represented by notes or secured in any way, does not constitute receipt of income within the meaning of the cash receipts and disbursements method of accounting. See also, Rev. Rul. 69-650, 1969-2 C.B. 106, and Rev. Rul. 69-649, 1969-2 C.B. 106.

Provided that the Plan is unfunded for purposes of Title 1 of ERISA and that the Plan and the proposed amendments are adopted without further changes, and based on the information submitted and representations made, we conclude that:

1. Under the economic benefit and constructive receipt doctrines of sections 61 and 451 of the Code, the crediting of amounts to a participant's Account, whether such amounts reflect the deferral of current compensation by participants, Church contributions or the deemed accumulation of income in the participant's accounts shall not result in taxable income for the participant or the participant's beneficiaries under the cash receipts and disbursements method of accounting until the taxable year in which the benefits are actually paid or otherwise made available.

2. The right of a participant to suggest how amounts credited to his Account are deemed to be invested shall not result in taxable income for the participant or the participant's beneficiary under the constructive receipt doctrine.

3. None of the following events shall constitute a transfer of property for purposes of section 83 of the Code or § 1.83-3(e) of the Regulations: (a) the adoption of the Plan, (b) the crediting of contributions to the Account; or (c) the crediting of investment earnings to the Account.

Except as specifically ruled on above, no opinion is expressed as to the federal tax consequences of the above transaction under any other provision of the Code. Furthermore, no opinion is expressed as to the federal tax consequences of the establishment by the Church of any trust associated with the Plan. Finally, no opinion is expressed as to the treatment of the Plan under ERISA.

This ruling is directed only to the taxpayer who requested it. This ruling applies only to the Plan as proposed to be amended and only as of the date of this ruling. Section 6110(j)(3) of the Code provides that this ruling may not be used or cited as precedent.

Sincerely,
Charles De Liee
Chief, Executive Compensation Branch
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure: Copy for 6110 purposes