

To: Saint Peter's University Hospital Retirement Plan Participants
From: Karen Ferguson, Director, Pension Rights Center
Re: IRS "church plan" ruling issued to Saint Peter's Healthcare System
Date: September 19, 2013

We know that many of you are very concerned about the news that the Internal Revenue Service has issued a private letter ruling to Saint Peter's saying that its pension plan is a "church plan." You have told us that you are worried that your retirement security has been placed at risk by this ruling. We also are troubled by the ruling and thought it would be helpful to give you our take on it and explain why, in our view, the IRS ruling is wrong.

The Pension Rights Center is a nonpartisan, nonprofit organization, based in Washington, D.C., that has been working since 1976 to protect and promote the retirement security of American workers, retirees, and their families.

The Saint Peter's private letter ruling of August 14, 2013, was as much of a shock to us as it was to many of you. Frankly, we found it bewildering.

In response to the notices that the hospital sent you, saying that it was seeking a church plan ruling, many of you submitted comments to the IRS, contesting Saint Peter's claim that your plan is a church plan, and a number of you accepted the notices' invitation to request an opportunity to speak to the IRS in person. To our knowledge, no Saint Peter's participant was given an opportunity to meet with the IRS on this matter. This strikes us arbitrary and unfair.

The facts. If IRS officials had met with you they would have heard that:

- Your pension plan was established by the hospital; it was not established by the Catholic Church. The Diocese of Metuchen does not stand behind your plan and would not step in to fund the plan if Saint Peter's were unable to continue doing so;
- Hospital officials fully complied with the federal private pension law, ERISA, for 32 years, and they continued to pay pension insurance premiums until 2010;
- Starting on January 1, 1974, the plan (like all other private-sector pension plans that had not been established by churches) operated as an ERISA plan;
- The IRS repeatedly granted the hospital's requests to amend the pension plan in order for it to remain in compliance with ERISA and the Internal Revenue Code; and
- Throughout your employment at the hospital, you were told in numerous booklets, statements, a memorandum, and funding reports that you had specific legal rights under ERISA and that your pensions were guaranteed by the Pension Benefit Guaranty Corporation, which insures almost all private-sector pension plans.

In addition, if you had been given an opportunity to be heard at an IRS meeting, you could have presented the documents you submitted with your comments, including a form filed with the IRS and signed by a hospital official, which states unequivocally that your plan is not a church plan or any other plan that is exempt from the federal pension law. Also, those of you who are former Saint Peter's executives could have provided oral testimony to support your written comments to the IRS stating that the plan had never considered to be a church plan at any time during your employment at Saint Peter's.

One letter was from a former Saint Peter's CEO, who served on the hospital's retirement committee for 24 of the 34 years he worked at the hospital.

The law. In recent church plan rulings (although curiously not in yours), the IRS has referenced facts such as these but has dismissed them as irrelevant under its interpretation of the law. For that reason, it is important for you understand what the law says, how it has been interpreted by the IRS, and why we think that interpretation is wrong.

Simply put, the law providing an exemption from federal law for certain church plans includes a **general rule** and a **special rule**.

The **general rule** says that plans established and maintained by churches are not covered by ERISA. This provision reflects a concern on the part of lawmakers that it might be inappropriate for the federal government's pension insurance agency to look at a church's financial records.

The **special rule** says that a plan that does not meet the general rule will be treated as if it is a church plan if it is "maintained by an organization, whether a civil corporation or otherwise," that has as its principal purpose the administration of a retirement plan, and is controlled by or associated with a church. This provision was included in the law at the urging of 27 "church pension boards."

Church pension boards (also called church benefits boards) are long-established corporations, trusts, and nonprofit associations created by churches, church conventions, or church congregations. They operate as financial institutions that typically have the authority to amend, terminate, administer, and/or fund large denominational retirement and health plans that include both churches and their related nonprofit organizations. Today, there are nearly 50 church pension boards

The IRS found that the Saint Peter's plan did not meet the **general rule** since it was not established and is not maintained by a church. In our opinion, this finding is correct.

The IRS found that your plan met the **special rule**, because your plan is administered by a retirement committee. In our view, this finding is incorrect.

Saint Peter's retirement committee is not a "civil corporation" or any other type of "organization" – and, significantly, the IRS ruling never says that it is. The reality is that the retirement committee is simply an internal hospital administrative committee that runs the plan.

Beyond the technicalities, the IRS's private letter ruling allows Saint Peter's to break the promise of guaranteed pensions that it repeatedly made to you throughout your work lives. As far as we are able to tell, the only reason for the ruling is that IRS officials do not want to admit that the agency has been misreading the law for many years.

Missing facts. The ruling, unlike earlier church plan rulings, leaves out key facts, so you have no way of knowing what statements the hospital made to the IRS under penalties of perjury.

For example, the special rule relied on by the IRS was not enacted until 1980. If the hospital told the IRS that it "voluntarily" complied with the federal pension law between 1974 and 1980, there is no way that could be true. Except for those established and maintained by churches, all plans were required to comply with the law during those six years.

Similarly, if the hospital told the IRS, as it began telling you starting in 2010, that its compliance with ERISA after the law was changed in 1980 (to add the special rule) was “voluntary,” that is also not true. As noted above, former hospital executives have told the IRS that the hospital complied with the federal pension law because they were advised that compliance was legally required.

Common sense. If Congress had intended to exempt pension plans for all religiously-affiliated nonprofit organizations from ERISA at the time it enacted the special rule in 1980, it would simply have added an additional phrase to the general rule. The rule would have been modified to say that “a church plan is a plan established and maintained by a church... **or by an organization controlled by or associated with a church...**”

The reality is that there was no reason for Congress to treat employees of Saint Peter’s any differently from employees of nonprofit hospitals that had no religious connections. Earning a pension has nothing to do with religious doctrine.

Furthermore, Saint Peter’s is required to comply with federal wage and hour, occupational health and safety, labor, and other federal laws that protect workers. It makes no sense for the hospital to be exempt from the worker protections in federal pension laws.

Fortunately, as many of you know, a Saint Peter’s retiree has filed a lawsuit in the New Jersey federal district court. The correctness of the IRS ruling, as well as other issues, will be addressed in that proceeding.

While we are waiting for the court’s decision – and the likely appeal that will follow – we look forward to working with you in other ways to put an end to church pension plan “conversions,” a practice that is solely designed to save money for employers at the expense of their retirees’ financial security. Please don’t hesitate to contact me or Joellen Leavelle with any questions or suggestions you may have at kferguson@pensionrights.org, jleavelle@pensionrights.org, or (202) 296-3776.