

PARSONAGE ELIGIBILITY- Rich Hammar, J.D., LL.M., CPA

Editor, Church Law & Tax Report

Section 107 of the Internal Revenue Code provides: "In the case of a minister of the gospel, gross income does not include--(1) the rental value of a home furnished to him as part of his compensation; or (2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home." The income tax regulations provide the following clarification:

"(a) In the case of a minister of the gospel, gross income does not include (1) the rental value of a home, including utilities, furnished to him as a part of his compensation, or (2) the rental allowance paid to him as part of his compensation to the extent such allowance is used by him to rent or otherwise provide a home. In order to qualify for the exclusion, the home or rental allowance must be provided as remuneration for services which are ordinarily the duties of a minister of the gospel."

According to this language, eligibility for a housing allowance is based on two requirements: (1) the recipient must be a "minister" as that term is defined by federal law; and (2) the housing allowance must represent compensation for services performed in the exercise of ministry. I will address each requirement separately.

#1 -- minister

It is my opinion that a reasonable basis exists for the conclusion that you qualify as a minister for federal tax purposes. In 1966, the Tax Court ruled that a Jewish cantor was eligible for a housing allowance since he was the equivalent of a "commissioned minister" and was recognized as a religious leader by his congregation. The Court observed that the cantor satisfied all three types of religious services described in the regulations (ministration of sacerdotal functions, conduct of religious worship, and the control, conduct, and maintenance of a religious organization), and accordingly he had to be regarded as a minister. The Court reasoned that neither the Code nor the regulations "attempt to say what a minister is, but only what a minister does." *Salkov v. Commissioner, 46 T.C. 190 (1966)*. A similar result was reached by the Court a few years later in the case of *Silverman v. Commissioner, 57 T.C. 727 (1972)*.

Also, it is significant that the IRS "audit guidelines for ministers" refer to the *Salkov* and *Silverman* cases, and then note that the Tax Court, in holding that a cantor of the Jewish faith was a duly ordained, commissioned, or licensed minister, looked to "the systematic manner the cantor was called to his ministry and the ecclesiastical functions he carried out in concluding that he was a minister"

In a 1978 ruling, the IRS followed the Tax Court decisions in *Salkov* and *Silverman* and held that a Jewish cantor who was not ordained but who had a bona fide commission and was employed by a congregation on a full-time basis to perform substantially all the religious worship, sacerdotal, training, and educational functions of the Jewish faith's religious tenets and practices is a minister of the gospel for federal tax purposes. The IRS audit guidelines state that this ruling "revoked and modified prior revenue rulings to the

extent that they required that an individual must be invested with the status and authority of an ordained minister fully qualified to exercise all of the ecclesiastical duties of a church denomination to be considered ministers"

#2 -- exercise of ministry

Section 1.1402(c)-5(b)(2)(iii) of the income tax regulations specifies that "if a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his ministry whether or not it is performed for a religious organization." This regulation is directly relevant in the interpretation of the housing allowance exclusion under Code section 107, since section 1.107-1(a) of the regulations specifies that the rules provided in section 1.1402(c)-5 are applicable in the construction of section 107.

The question, then, is whether or not you are "performing service in the conduct of religious worship or the ministration of sacerdotal functions." If the answer to this question is yes, then you are eligible for a housing allowance whether or not your employer is a religious organization.

Your duties at the school will include general teaching, teaching about prayer, and leading daily prayer services. I believe that a reasonable basis exists for the conclusion that these duties constitute "the conduct of religious worship or the ministration of sacerdotal functions," and therefore your services constitute the exercise of ministry. This conclusion is not completely certain, as is true with most tax questions. For example, in a 1997 case the Tax Court denied a housing allowance to an administrator of a Jewish synagogue. The Court concluded that in deciding whether or not an individual performs the functions of a minister, consideration must be given not only to the religious duties the individual performs, but also to the religious duties that are not performed. Further, the performance of some religious functions is not enough to make one a minister for federal tax purposes. The administrator in this case performed a number of religious functions, but these were largely administrative in nature. More importantly, he performed few of the duties of an ordained, commissioned, or licensed minister. This case is instructive, because it indicates that the IRS or a court may well focus on the duties you do perform (that are the duties of a "minister") as well as ministerial duties that you do not perform. The lesson here is that you can increase the likelihood that you will be deemed to be a minister for tax purposes if your job description lists a number of religious tasks. I believe that teaching about prayer, and leading daily prayer services, are a good start. But, to enhance your chances even more, you should give some thought to other "core" religious duties that you could perform.

There is one final issue I would like to address. If you are eligible for a housing allowance, then this has two very important additional consequences. First, your income is exempt from income tax withholding, unless you request voluntary withholding. And second, you would be considered self-employed for social security, meaning that you would pay the self-employment tax rather than FICA taxes. Your employer would not withhold FICA taxes from your wages.

Please let me know if I can be of any further assistance to you with regard to this question. As you can appreciate, these cases are very "fact intensive," meaning that the ultimate outcome will depend on the specific facts of each case. I have been given only a brief statement of the duties you will perform at the school. My opinion is based entirely on the information you provided.

For additional information, you may want to review chapter 3 of my 2002 Church & Clergy Tax Guide, which is devoted exclusively to the issues you have raised.