

Office of Chief Counsel
Internal Revenue Service

Memorandum

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to: Craig Kessler
Analyst: Service Center Compliance
SE:S:C:CP:FCC:E
from: Michael A. Swim
Senior Technician Reviewer
Employment Tax Branch 1

subject: **Minister Waiver Program**

This Chief Counsel Advice responds to your memorandum dated September 9, 2003. In accordance with I.R.C. 6110(k)(3), Chief Counsel Advice may not be used or cited as precedent.

ISSUES

(1) Taxpayer is a duly ordained minister of a church who is not opposed to the acceptance of public insurance. Taxpayer subsequently has a change of faith and is ordained as a minister in another church, which results in a change in belief by taxpayer to being opposed to the acceptance of public insurance. Taxpayer seeks exemption from self employment tax under section 1402(e) of the Internal Revenue Code (Code). What language must the taxpayer provide when submitting a Form 4361, Application for Exemption From Self Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners, or when submitting an additional statement along with the Form 4361 that sets forth taxpayer's opposition to the acceptance of any public insurance that arises from a change of faith and a resulting change in belief by the taxpayer to opposing the acceptance of public insurance?

(2) Taxpayer is a duly ordained minister of a church who because of religious principles is opposed to the acceptance of public insurance. Taxpayer filed a Form 4361 that the Service did not approve for reasons of late filing. Taxpayer subsequently has a change of faith and is ordained as a minister in another church and taxpayer has no resulting change in belief regarding public insurance (taxpayer continues to be opposed to the acceptance of public insurance). May the taxpayer file another Form 4361?

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(3) Taxpayer is a duly ordained minister of a church. Taxpayer applies for exemption from self employment taxes by filing a Form 4361. On line 3 of the Form 4361, taxpayer enters the date of January 1, 2000 ("01/01/00") as the date that he was ordained. Does this mean that for purposes of line 5 of the form (where taxpayer is to enter the first two years that taxpayer had net earnings from self-employment of \$400 or more for service performed in the exercise of the taxpayer's ministry after the date entered on line 3), that earnings cannot start until January 1, 2001?

CONCLUSIONS

(1) The taxpayer seeking exemption from self employment tax under section 1402(e) of the Code who has a change of faith that results in a change in belief to opposing the acceptance of public insurance must provide a statement using language that meets the requirement of section 1402(e) and section 1.1402(e)-2A(a)(2) of the Income Tax regulations. Form 4361 already contains a statement providing the necessary language. Thus, the taxpayer merely needs to sign the Form 4361 (section 7 of current form) certifying to this statement. If the taxpayer provides an additional statement along with the Form 4361, it would have to satisfy the requirements of 1402(e) and section 1.1402(e)-2A(a)(2) (e.g., follow the statutory and regulatory language).

(2) The taxpayer under these facts should not submit a second Form 4361 based upon his change of faith and his being ordained as a minister in a new church. These facts, in themselves, do not provide the taxpayer a new or second opportunity to timely file a Form 4361 as the taxpayer had no change in his earlier belief opposing the acceptance of public insurance.

(3) For purposes of line 5 of the Form 4361, a taxpayer who was ordained on January 1, 2000, can have net self employment earnings of \$400 or more for service performed in the exercise of the taxpayer's ministry beginning in the year 2000 (thus, the earnings can start earlier than January 1, 2001). If the taxpayer had net earnings from self employment of \$400 or more for service performed in the exercise of the taxpayer's ministry in years 2000 and 2001, then the taxpayer must file Form 4361 on or before the due date (including extensions) of the taxpayer's income tax return for the year 2001.

LAW AND ANALYSIS

(1) As a preliminary matter, while the issue presented only goes to the language that the taxpayer must provide on the Form 4361 or on an additional statement when seeking exemption from self employment taxes under particular facts, we note that the case of Hall v. Commissioner, 30 F.3d 1304 (10th Cir. 1994), rev'g 1993 T.C. Memo 360 (1993) discussed in-depth in section (2) of this Law and Analysis section, provides that when an individual enters the ministry anew in a new church, having adopted a new set of beliefs about the propriety of accepting public insurance, it is logical and consistent with the statutory language of 1402(e) to characterize that individual as a "new" minister for the purposes of seeking an exemption.

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As to the issue presented, section 1402(e)(1) of the Code provides, in relevant part, that:

any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner, upon filing an application (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) together with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance (with respect to services performed by him as such minister, member, or practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act) and, in the case of an individual described in subparagraph (A), that he has informed the ordaining, commissioning, or licensing body of the church or order that he is opposed to such insurance, shall receive an exemption from the tax imposed by this chapter with respect to services

Section 1.1402(e)-2A(a)(2) of the Income Tax Regulations also provides that the application for exemption from self-employment tax shall contain, or there shall be filed with such application, a statement to the effect that the individual making application for exemption is conscientiously opposed to, or because of religious principles is opposed to, the acceptance (with respect to services performed by him in his capacity as a minister, member, or Christian Science practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act).

These authorities clearly set forth the requirements and language that an individual must include if he applies for an exemption from self-employment tax when he is either conscientiously opposed to, or because of religious principles he is opposed to, the acceptance of any public insurance. Form 4361, Application for Exemption From Self Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners, which is the form that an ordained, commissioned, or licensed minister of a church uses to apply for the exemption, contains a statement providing the necessary language. Thus, the taxpayer merely needs to sign the Form 4361 (section 7

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of current form) certifying to this statement for opposing the acceptance of public insurance.

You tell us that there are situations in the field, where taxpayers who are ordained ministers who have had a change of faith accompanied with a change in belief to opposing the acceptance of public insurance, are filing additional statements along with the Form 4361 that contain language that opposes the acceptance of public insurance. While a taxpayer may file an additional statement along with the Form 4361, the statement must contain language that meets the requirements of section 1402(e) and section 1.1402(e)-2A(a)(2) (for example, language tracking the statutory and regulatory language). We advise that if a taxpayer provides a statement that uses language that does not meet the requirements of these sections, the exemption must be denied.

(2) In this situation, the taxpayer is a duly ordained minister of a church who because of religious principles is opposed to the acceptance of public insurance. The taxpayer has previously signed and filed a Form 4361 seeking exemption from self employment tax. The taxpayer has satisfied all of the section 1402(e) exemption requirements, except that he did not timely file this application pursuant to section 1402(e)(3) by the due date of taxpayer's income tax return (including any extension thereof) for the second taxable year for which he had net earnings from self-employment of \$400 or more for service performed in the exercise of taxpayer's ministry. The Service correctly denied the taxpayer's application due to the late filing. Years later the taxpayer changes his faith and joins another church. Taxpayer is then ordained as a minister in his new church and because of religious principles he continues to be opposed to accepting public insurance. You ask whether the taxpayer may file another Form 4361? The question goes to whether the taxpayer may file another Form 4361, which will be considered timely filed, after his ordination in the new church if he does so by the due date (including extensions) of his income tax return for the second taxable year for which he has net earnings from self-employment of \$400 or more for service performed in the exercise of taxpayer's ministry in the new church.

Section 1402(e)(3) contains the requirements for timely filing an application that allow an individual who is duly ordained, commissioned, or licensed minister of a church to apply for exemption from self-employment taxes. It provides:

Any individual who desires to file an application pursuant to paragraph (1) must file such application on or before whichever of the following dates is later; (A) the due date of the return (including any extension thereof) for the second taxable year for which he has net earnings from self-employment (computed without regard to subsection (c)(4) and (c)(5)) of \$400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5); or (B) the due date of the return (including any extension thereof)

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for his second taxable year ending after 1967.

Two cases, Ballinger v. Commissioner, 78 T.C. 752 (1982), aff'd 728 F.2d 1287 (10th Cir. 1984) and Hall v. Commissioner, 30 F.3d 1304 (10th Cir. 1994), rev'g 1993 T.C. Memo 360 (1993) discuss the requirements for timely filing a Form 4361. In Ballinger, a church issued a certificate of ordination to petitioner on November 22, 1969. He served as a minister of that church. Although his earnings made him eligible, he did not apply for exemption from self-employment tax. At the time he was ordained as minister of that church and while acting as minister, he did not oppose the acceptance of public insurance on the basis of conscience or religious principles.

In 1973, petitioner became the minister of another church. He received net earnings from self-employment which were derived from the performance of services as a duly ordained minister in 1973, 1974, and 1975. On July 7, 1978, the petitioner filed with the Internal Revenue Service a Form 4361 dated June 28, 1978. He indicated on the Form 4361 that he was ordained on May 2, 1978, and that the first 2 years after that date in which he expected to have net earnings from self-employment of \$400 or more, some part of which was from services as a minister, were the years 1978 and 1979. Petitioner filed on the grounds that his religious beliefs had evolved and that he had begun opposing the acceptance of public insurance in the fall of 1977.

The Tax Court held that petitioner was required under the reasonable guidelines of section 1402(e)(2) [now section 1402(e)(3)] to file his application for exemption on or before April 15, 1975. Petitioner had filed on July 7, 1978, more than 3 years subsequent to the due date of the tax return for the second taxable year for which he had net earnings from self-employment of \$400 or more derived from his performance of services as a duly ordained minister.

On appeal, the Tenth Circuit in Ballinger v. Commissioner, 728 F.2d 1287 (10th Cir. 1984) affirmed the result reached by the Tax Court. However, the Tenth Circuit noted that the more difficult question is whether an individual, who has already assumed the duties of a minister, belatedly acquires a belief in opposition to the acceptance of public insurance and that change in belief is not accompanied by a change in faith, is entitled to the exemption if he files within the statutory time frame after acquiring his new belief. The Tenth Circuit held that the statute does not provide for an exemption where a minister belatedly acquires a belief in opposition to public insurance apart from conversion to another faith.

In Hall, the taxpayer, an ordained deacon, earned more than \$400 per year from his ministerial services in both 1980 and 1981. The taxpayer's activities as a deacon made him potentially eligible to apply for the exemption from self-employment tax under section 1402(e). However, at that time, the taxpayer was not religiously or conscientiously opposed to the acceptance of public insurance and his church

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apparently had no policy opposing the acceptance of such insurance. Consequently, taxpayer was not eligible and did not apply for an exemption.

Five years later taxpayer was ordained by another church and began a new ministry that was accompanied by taxpayer's acceptance of a new belief in opposition to public insurance. The taxpayer earned in excess of \$400 from his services during the first year of his new ministry, and he applied for an exemption from self-employment tax in the January preceding the tax deadline in April of that year. The application was denied as untimely on the grounds that the application should have been filed no later than April 15, 1982 as required by the provisions of section 1402(e)(3), and the Tax Court affirmed the denial.

On appeal, the Tenth Circuit stated that when an individual enters the ministry anew in a new church, having adopted a new set of beliefs about the propriety of accepting public insurance, it is logical and consistent with the statutory language of 1402(e) to characterize that individual as a "new" minister for the purposes of seeking an exemption. Thus, taxpayer qualified for the self-employment tax exemption, by applying for exemption in the first tax year immediately following his second ordination and the commencement of his new ministry.

As in Ballinger and Hall, the taxpayer in the facts presented had a change of faith. But unlike these cases, he did not have a change of belief in opposing the acceptance of public insurance. He has consistently opposed such insurance beginning with his first ministry. When an individual enters the ministry anew in a new church, having adopted a new set of beliefs about the propriety of accepting public insurance, it is logical and consistent with the statutory language of section 1402(e) to characterize that individual as a "new" minister for the purposes of seeking an exemption. Hall, supra at 1307. Under the facts and circumstances presented, however, the taxpayer had his opportunity under section 1402(e)(3) based on his beliefs to apply for an exemption after the first ordination, but the exemption was denied because he did not file the application timely as is required under the statute. The statutory language does not give him a second opportunity to file a Form 4361 in the stated circumstances due only to a change in faith and entering the ministry in a new church.

You have asked us if there are exceptions to this rule. We encourage you to call us if other cases arise that present situations that you are unsure how to answer.

(3) In this situation, the taxpayer writes on line 3 of the Form 4361 that he was ordained on January 1, 2000 (01/01/00). You ask whether for purposes of line 5 of the Form 4361 (where taxpayer is supposed to enter the first two years that taxpayer had self employment earnings of \$400 or more for service performed in the exercise of the taxpayer's ministry after the date entered on line 3) that earnings cannot start until the year 2001? The first year for consideration would be the year 2000. A taxpayer ordained on January 1, 2000, can have net earnings from self employment of \$400 or

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more for service performed in the exercise of the taxpayer's ministry beginning in the year 2000.

Section 1402(e)(3) of the Code provides, generally, that any application for exemption from self employment taxes must be filed by the later of the due date (including extensions) of the taxpayer's income tax return for the second taxable year for which the minister has net earnings from self-employment of \$400 or more. Also, see Rev. Rul. 77-87, 1977-1 C.B. 266. Thus, if the taxpayer had net earnings from self employment of \$400 or more for service performed in the exercise of the taxpayer's ministry in years 2000 and 2001, then the taxpayer must file Form 4361 on or before the due date (including extensions) of the taxpayer's income tax return for the year 2001.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call [REDACTED] Attorney, Employment Tax Branch 1 or myself at [REDACTED] if you have any further questions.

cc: Associate Chief Counsel (Corporate)