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Person to Contact:

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Date:

October 18, 1999

Legend

School =
Church =
Year One =

Dear _____ :

This is in reply to your request for a ruling concerning whether a portion of the remuneration you receive for services performed for your employer can be designated as a parsonage allowance and excluded from income pursuant to section 107 of the Internal Revenue Code (Code).

FACTS

The taxpayer was ordained as a minister in Year One by the Church. He is currently employed full time as a guidance counselor and teacher by the School. The School is sponsored by six different congregations of the Church. Four of the sponsoring congregations house branches of the School in their Church facilities.

The School was incorporated in Year One. Each of the six sponsoring congregations appoint two of their members to serve on the School board. Each congregation chooses how their representatives are selected and the length of time they will serve on the School board. The sponsoring congregations, through their respectively appointed board members, are responsible for establishing School policies, purchasing equipment and supplies, maintaining facilities, as well as approving and signing teacher contracts. The School board elects its own officers from its number.

The Treasurer of the School board is responsible for maintaining the financial

records of the school and for presenting monthly financial statements to the School board. Representatives from each sponsoring congregation who serve on the School board report the financial operations of the School back to their respective congregations. The sponsoring congregations make annual cash contributions to the School for each school year, with each congregation setting its own level of support. In the event that it becomes necessary to dissolve the School, the School's bylaws provide that all properties of the School shall become the sole property of the sponsoring congregations.

At the beginning of each academic year, the taxpayer submits a request to the School board that a portion of the annual remuneration he receives from the School be designated as a parsonage allowance. The amount of the parsonage allowance requested is determined by the taxpayer based on anticipated annual housing expenses. The School board approves the taxpayer's request for a parsonage allowance at the beginning of each academic year.

APPLICABLE LAW

Section 107 provides that 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. Section 1.107-1(a) of the Income Tax Regulations (regulations) provides that:

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. In general, the rules provided in § 1.1402(c)-5 will be applicable to such determination. Examples of specific services the performance of which will be considered duties of a minister for purposes of section 107 include the performance of sacerdotal functions, the conduct of religious worship, the administration and maintenance of religious organizations and their integral agencies, and the performance of teaching and administrative functions at theological seminaries.

The issue in the present case is whether the taxpayer is receiving remuneration for "services which are ordinarily the duties of a minister of the gospel" within the meaning of section 107.

Section 1.1402(c)-5(a)(2) of the regulations provides that an ordained, commissioned or licensed minister of a church is engaged in carrying on a trade or business with respect to service performed by him in the exercise of his ministry or in the exercise of duties required by a religious order unless an exemption under section 1402(e) is effective.

Service performed by a minister in the exercise of his or her ministry includes: 1) the ministration of sacerdotal functions; 2) the conduct of religious worship; and 3) the control, conduct and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations) under the authority of a religious body constituting a church or church denomination. Regulations § 1.1402(c)-5(b)(2).

The pivotal question in this case is whether the taxpayer is engaged in the control, conduct and maintenance of an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination.

Section 1.1402(c)-5(b)(2)(iv) of the Regulations provides that if a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all service performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization is in the exercise of his ministry. Service performed by a minister in the control, conduct and maintenance of a religious organization relates to directing, managing or promoting the activities of such organization.

In Revenue Ruling 70-549, 1970-2 C.B. 16, the Service held that an ordained minister who was serving as chairman of the department of education of a college that was held to be "in practice" an integral agency of a church, and any minister serving on the faculty of the college as a teacher or administrator, was performing service "in the exercise of his ministry" within the meaning of section 1.107-1 and 1.1402(c)-5 of the Regulations. The Service held that the ministers are entitled to exclude from their gross income a rental allowance to the extent allowable under section 107 of the Code and that remuneration paid to the ministers is subject to the self-employment tax under section 1402 of the Code.

In Revenue Ruling 71-7, 1971-1 C.B. 282, the Service furnished guidance concerning whether a duly ordained minister, who is employed as a member of the faculty of a church-related college and whose duties do not include the conduct of religious worship or the ministration of sacerdotal functions, is performing services as a "minister of a church in exercise of his ministry" for purposes of the Federal Insurance Contributions Act (FICA) and the Self-Employment Contributions Act (SECA).

In considering whether a minister serving on the faculty of a college is performing

services in the exercise of his ministry, it is necessary to determine (a) whether the college employing him is itself a religious organization under the authority of a religious body constituting a church or church denomination or, (b) if the college is not such a religious organization, whether the college is operated as an integral agency of such a religious organization.

Revenue Ruling 71-7 holds that the services performed by the ministers as heads of religious departments and as teachers and administrators on the faculty of a college that was an integral agency of a church constitute the performance of services in the exercise of their ministry for purposes of FICA and SECA.

In Revenue Ruling 72-606, 1972-2 C.B. 78, the Service considered whether a minister who served as the administrator of an old age home that was affiliated with a religious organization was eligible for the housing allowance provided under section 107 of the Code. The old age home designated an amount equal to the rent he actually paid as a rental allowance under section 107. The revenue ruling holds that the minister cannot exclude the rental allowance from his gross income under section 107 because the old age home is not an integral agency of a religious organization.

In Revenue Ruling 72-606, the Service utilized a number of criteria to determine whether a church-related institution is an integral agency of a religious organization. These criteria include: (1) whether the religious institution incorporated the institution; (2) whether the corporate name of the institution indicates a church relationship; (3) whether the religious organization continuously controls, manages and maintains the institution; (4) whether the trustees or directors of the institution are approved or must be approved by the religious organization or church; (5) whether trustees or directors may be removed by the religious organization or church; (6) whether annual reports of finances and general operations are required to be made to the religious organization or church; (7) whether the religious organization or church contributes to the support of the institution; (8) whether, in the event of the dissolution of the institution, its assets would be turned over to the religious organization or church. The absence of one or more of these characteristics will not necessarily be determinative in a particular case.

Based on the above criteria, we conclude that the School is an integral agency of the Church. Each of the six sponsoring congregations appoint two of their members to serve on the School board, and each is free to remove and/or replace its own representatives at will. The sponsoring congregations, through their respectively appointed board members, establish School policies, purchase equipment and supplies, maintain facilities, as well as approve and sign teacher contracts. The School board elects its own trustees and officers from among the board members appointed by the congregations. Each member of the School's staff is required to sign a "Statement of Faith" embracing Church doctrine. The Treasurer of the School board presents monthly financial statements to the School board, and it is the responsibility of the members to report the financial operations of the School back to their respective

congregations. The six sponsoring congregations provide annual cash contributions to the School. Additionally, four of the sponsoring congregations house branches of the School in their church facilities. In the event of dissolution of the School, its assets would become the sole property of the sponsoring congregations.

Under section 1402 and the regulations thereunder, an ordained, commissioned or licensed minister who is performing services in the control, conduct or maintenance of an integral agency of a church is engaged in performing services in the exercise of his ministry for purposes of SECA. Section 1.107-1 of the Income Tax Regulations provides that the rules of section 1402 apply in determining what duties constitute the duties of a minister of the gospel under section 107. Revenue Rulings 70-549 and 71-7 hold that ministers who serve on the faculty of a college that is an integral agency of a church, but do not perform any ecclesiastical duties are engaged in performing services in the exercise of their ministry and hence are eligible to exclude a portion of their compensation as a rental allowance under section 107 of the Code.

In the present case, the School is an integral agency of the Church. The taxpayer is an ordained minister of the Church who teaches on the faculty of the School. We therefore conclude, on the basis of the preceding authorities, that the services performed by the taxpayer are in the exercise of his ministry under section 1402 and constitute the duties of a minister of the gospel under section 107.

Based on the foregoing, we conclude that the taxpayer is performing services which are ordinarily the duties of a minister of the gospel because he is an ordained minister of the Church and is performing teaching services for an integral agency of the Church. The taxpayer is therefore entitled to exclude from his gross income amounts that are properly designated as a housing allowance under section 107 of the Code and the applicable regulations for the years at issue. In this regard, prior to payment of the parsonage allowance each year, the School board must designate the amount paid as such allowance pursuant to official action. See Regulations § 1.107-1(b). The designation of an amount as a rental allowance may be evidenced in an employment contract, in minutes of or in a resolution by the School board or in its budget, or in any other appropriate instrument evidencing such official action. Id. Additionally, the amount of the parsonage allowance which may be excluded from the taxpayer's gross income each year is limited to the lesser of the following amounts: (1) the amount actually used to provide a home, (2) the amount officially designated as a rental allowance, or (3) the fair rental value of the home. See Rev. Rul. 71-280, 1971-2 C.B. 92. The remuneration received by the taxpayer from the School is income received

from a trade or business for purposes of SECA, unless a valid election has been filed under section 1402(e) of the Code, and is therefore subject to the self-employment tax under section 1401 of the Code.

No opinion is expressed concerning the federal tax consequences of the transactions described above under any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Jerry E. Holmes
Chief, Branch Two
Office of the Associate Chief
Counsel (Employee Benefits
and Exempt Organizations)