

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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CASE MIS No.: TAM-149227-02/CC:TEGE:EOEG:ET1

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Years Involved:
Date of Conference:

LEGEND:

School =
Church =
City X =
State Y =
Year A =
Year B =
M = \$

ISSUE:

Whether the teachers and administrative staff of School are ministers of the gospel and therefore qualify for the parsonage allowance under IRC §107.

CONCLUSION:

The teachers and administrative staff who received parsonage allowances from School in 1999 do not qualify under section 107 because they are not ministers of the gospel.

TAM-149227-02

FACTS:

School is an affiliate of Church located in City X, State Y. School teaches preschool and kindergarten through eighth grades. All of the teachers of School are certified by State Y to teach school and School is accredited by State Y's Department of Education. School's teachers and administrative staff are not required to attend a bible college or a divinity program. Membership in the Church is not required to be employed in either the teaching or administrative positions, but employees are required to attend a church. In Year A, the School's board resolved to have School's teachers and administrative staff receive a parsonage allowance that averaged M per person for Year B.

A review of the duties and responsibilities of the teachers and administrative staff reflect the typical duties and responsibilities found in secular schools. These duties do not include duties performed by ministers of the gospel which generally are: performing the Lord's supper, baptism, marriage, moderating of church sessions, sitting on church boards of government, conducting worship services, performing funeral services and ministering to the sick and needy.

Ministers of the Church are either ordained or licensed. School states that the teachers and administrative staff are commissioned as ministers of the gospel and that the commissioning took place the date each employee began his or her duties at School. The commissioning process consists of a job interview and hiring process which culminates in the signing of an employment contract and the first day of work. School represents that when the board approves the candidate for the teaching or administrative position, they instruct the administrator to commission the candidate by calling him or her to be a teacher or administrative staff member and that the commissioning takes place on each employee's date of hire.

LAW AND ANALYSIS:

Section 107 of the Internal Revenue Code (Code) provides that in the case of a minister of the gospel, gross income does not include the rental value of a home furnished to the minister as a part of the minister's compensation or the rental allowance paid to the minister as part of the minister's compensation, to the extent used by the minister to rent or provide a home.

Sections 1402, 3121, and 3401 of the Code, which provide definitions for purposes of the Self-Employment Contributions Act, Federal Insurance Contributions Act and income tax withholding respectively, refer to services performed by a "duly ordained, commissioned, or licensed minister" of a church in the exercise of his ministry. Section 3309, relating to the Federal Unemployment Tax Act, contains similar language.

TAM-149227-02

Section 1.107-1(a) of the Income Tax Regulations (regulations) provides that in order to qualify for the exclusion provided by section 107, 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 regulation section 1.1402(c)-5 apply to such determination which is based on section 1402(c)(4) of the Code. Section 1.107-1(a) also provides that examples of specific services 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.

Section 1.1402(c)-5(a)(2) of the regulations provides that a "duly 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.

A balancing test of factors is used to determine whether a person is considered a minister of the gospel. Under Knight v. Commissioner, 92 T.C.199 (1989) and Wingo v. Commissioner, 89 T.C. 911 (1987), there are five factors that collectively determine whether a person qualifies as a minister of the gospel. A minister of the gospel must do a majority of the following: administer sacerdotal functions; conduct worship services; perform services in the control, conduct and maintenance of a religious organization; be considered a spiritual leader by his or her religious body; and be ordained, licensed or commissioned. Under section 1402(c)(4) of the Code, at a minimum, the person is required to be "duly ordained, licensed or commissioned."

In Kirk v. Commissioner, 51 T.C. 66 (1968), affirmed, 425 F.2d 492 (D.C. Cir 1970), the Tax Court stated that the term "'Commission' means the act of committing to the charge of another or an entrusting." The court held that the petitioner was not commissioned because no congregation or other body of believers was committed to his charge. The duty of spreading the gospel, either by sermon or teaching, was not formally entrusted to his care. The petitioner was merely a nonordained church employee. Furthermore, all the services performed by the petitioner were of a secular nature.

In Lawrence v. Commissioner, 50 T. C. 494 (1968), the petitioner claimed that he was recognized by his church as a commissioned minister of the gospel and performed the duties of such. However, the court held that there was no evidence that petitioner was recognized by his church as a minister of the gospel. His church hired him as minister of education. The recitation in the minutes of the church wherein he was commissioned as "Commissioned Minister of the Gospel in Religious Education that he may receive benefits of laws relative to the Social Security Act and Internal Revenue Services," indicated on its face that the recitation was nothing more than paperwork procedure designed to help petitioner get a tax benefit from Internal Revenue Service without

TAM-149227-02

giving him any new status. The petitioner's authority and duties were in no way changed by the 1961 commission. The petitioner testified that the commissioning was prompted by some statement at the Southern Baptist Convention "that the people in this particular field could now receive house allowances from the government if they were commissioned." The petitioner further testified that when he spoke of someone in the ministry he referred to one who had been ordained into the Baptist ministry and he described the laying on of hands ceremony included in the ordination by the church congregation of a person requesting to be ordained as a Baptist minister. A person ordained by one congregation would be accepted as a Baptist minister by another congregation. The court held that petitioner failed to sustain his burden of proving that he was a minister of the gospel within the meaning of section 107 because the record does not support petitioner's allegation that he was recognized by his church as a minister of the gospel and because the evidence fell far short of showing that the prescribed duties of a minister of education are equivalent to the services performed by a Baptist minister.

Based on the information and documentation provided, we conclude that the teachers and administrative staff of School failed the minimum requirement of section 1402(c)(4). School hired the employees as teachers and administrative staff and not as ministers of the gospel. Furthermore, none of the prescribed duties of the teachers and administrative staff are equivalent to the services performed by a Church minister. Accordingly, the teachers and administrative staff do not qualify for an exclusion under the parsonage allowance in section 107.

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.