



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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CONEX-113785-04

The Honorable Diana DeGette
Member, U.S. House of Representatives
600 Grant Street, Suite 202
Denver, Colorado 80203

Dear Congresswoman DeGette:

This letter is in response to your joint inquiry

, asking us to reconsider a decision not to issue a ruling to your constituent . In a prior ruling request, asked whether his position as would allow him to exclude a housing allowance from his gross income. I apologize for the delay in responding to your request.

believes that his unique position as , an , meets the requirements of the Internal Revenue Code (the Code) that allows him to exclude his housing allowance from gross income. We declined to issue a ruling because the fact intensive nature of the case made it difficult for us to make a clear determination on the issue and at the same time ensure sound and consistent administration of the tax code.

Although we can generally provide a letter ruling by interpreting and applying tax laws to a taxpayer's specific set of facts, we will not ordinarily make such a determination when the determination is primarily one of fact. However, just because we decide not to make a determination regarding a taxpayer's request does not mean that we necessarily take an adverse view of the transaction.

I am providing some general information to help explain the context of the tax issues related to determining whether a housing allowance is excludible from gross income. I hope this information is helpful.

The rules governing whether a housing allowance (also referred to as a parsonage allowance or a rental allowance) is excludible from gross income are provided in

section 107 of the Code and section 1.107-1 of the Income Tax Regulations. Under these provisions, a minister of the gospel may exclude from gross income either:

- 1) The rental value of a home furnished as part of compensation (often referred to as a "parsonage"); or
- 2) A rental allowance (often referred to as a "housing allowance" or "parsonage allowance") paid as part of compensation (to the extent used to rent or provide a home and to the extent the allowance does not exceed the fair rental value of the home).

Although "minister of the gospel" is phrased in Christian terms, the IRS and the courts include people who are the equivalent of ministers in other religions.

To exclude the rental value of a parsonage or a housing allowance from income under these provisions, an individual must first have the status of a minister. A "minister" is authorized to administer sacraments, preach, and conduct worship services. In addition, the minister must be licensed, commissioned, or ordained. If a church or church denomination ordains some ministers and licenses or commissions others, the licensed or commissioned ministers must perform substantially all the religious functions within the scope of the tenets and practices of the minister's denomination to be able to exclude the rental value of a parsonage or a housing allowance from gross income under section 107 of the Code.

Further, the parsonage or housing allowance must be provided as remuneration for services that are ordinarily the duties of a minister of the gospel. These services include the ministration of sacerdotal functions and the conduct of religious worship (and also includes the control, conduct, and maintenance of religious organizations that are under the authority of a church or church denomination). Whether services performed by a minister are the ministration of sacerdotal functions or the conduct of religious worship depends on the tenets and practices of the particular church or church denomination and is an extremely fact-intensive inquiry.

I understand _____ concerns regarding this complex issue. Cases such as the one presented here generally require us to make many fact-intensive inquiries and determinations, on a case-by-case basis. Examples of such inquiries include:

- 1) Clearly identifying the tenets and practices of the individual's denomination;
- 2) Determining whether the denomination ordains some ministers and licenses or commissions others;
- 3) Determining whether any licensed or commissioned ministers perform substantially all the religious functions within the scope of the tenets and practices of the minister's denomination; and
- 4) Deciding whether the services performed are considered the conduct of religious worship or the ministration of sacerdotal functions under the tenets and practices of the particular church or church denomination.

These are difficult and intensely factual questions making this area inherently one that falls within the general position that determinations that are primarily issues of fact are not appropriate candidates for the private letter ruling process. Nonetheless, in order to ensure that we have considered every possible aspect of the matter, we are willing to consider the issue further. We invite _____ to use our letter ruling, pre-submission conference procedures. These procedures allow the Associate Chief Counsel's office and the taxpayer to hold a conference before the taxpayer submits a request for a letter ruling to discuss substantive or procedural issues relating to a proposed transaction. A taxpayer or taxpayer's representative can request a pre-submission conference in writing or by telephone. See Rev. Proc. 2004-1, section 10.07, 2004-1 I.R.B. 1, for more details. No fee is associated with a pre-submission conference. A request for a letter ruling must follow the procedures found in Rev. Proc. 2004-1, section 8, 2004-1 I.R.B. 1. Generally, PLR fee is \$3,500 for 501(c)3 organizations and \$6,000 for other taxpayers. See Rev. Proc. 2004-1 Appendix A, 2004-1, I.R.B. 1. We ask that _____ remain mindful of the possibility that ultimately, we may not be able to issue a ruling after a subsequent review.

I appreciate the significance of the issue you have brought to my attention. I hope this information helps you understand the tax issue _____ has raised. I appreciate your concerns about the tax guidance _____ has received, and I look forward to reexamining this issue and responding to _____ with fairness and clarity.

I sent similar letters to _____

_____ . If you have further questions, please call me at _____

_____ of my staff at _____

Sincerely,

Nancy J. Marks
Deputy Division Counsel/Deputy Associate
Chief Counsel
(Tax Exempt and Government Entities)