



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

September 22, 2014

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Release Date: 12/26/2014

CONEX-132268-14

UIL: 107.00-00

The Honorable Bob Goodlatte
916 Main Street
Suite 300
Lynchburg, VA 24504-1608

Dear Congressman Goodlatte:

I am responding to your inquiry dated August 27, 2014, on behalf of your constituent,
. She wrote about the income tax exclusion for a minister's rental allowance.

In an e-mail to your office, _____ stated: "For years the _____ Church has had an arrangement with the IRS: retired pastors can deduct their home expenses prior to taxes i.e. mortgage, utilities, repairs etc." _____ further stated that she worked for seven years as a _____ Church pastor; that she has used the tax exclusion since she retired in 2002; and that she "got notification that the IRS is challenging this rule and it's in the courts."

The following is general information about the minister's rental allowance exclusion, which we hope will be helpful to _____ :

A minister may exclude rental allowance paid as part of compensation to the extent the minister uses it to rent or provide a home and to the extent the allowance does not exceed the fair rental value of the home, including furnishings and utilities. [Section 107 of the Internal Revenue Code (the Code)]. A retired minister may exclude rental allowance paid as part of compensation for past services, to the extent the minister uses it for expenses directly related to providing a home. [Revenue Ruling 63-156, 1963-2 C.B. 79, and Revenue Ruling 75-22, 1975-1 C.B. 49].

To qualify for the income tax exclusion, an individual must be a "minister." A "minister" is authorized to administer sacraments, preach, and conduct worship services. In addition, the

minister must be licensed, commissioned, or ordained. [Sections 1.107-1(a) and 1.1402(c)-5 of the Treasury Regulations].

The amount of the rental allowance must be designated pursuant to official action taken by the employing church or other qualified organization before the payment is made. [Section 1.107-1(b) of the Income Tax Regulations].

stated that she received information that we are challenging the minister's rental allowance rules. However, we are not challenging the rules on rental allowances for ministers. To the contrary, the government is defending the rental allowance in litigation that challenges the constitutionality of the Code provision. In that litigation, the United States District Court for the Western District of Wisconsin ruled that the rental allowance is an unconstitutional violation of the establishment clause and enjoined its enforcement, finding that it provides a benefit to religious persons that it does not give to others. *See, Freedom from Religion Foundation, Inc. v. Lew*, 983 F.Supp.2d 1051 (W.D. Wis. 2013). The District Court's order enjoining the IRS from enforcing the Code provision only applies to the Western District of Wisconsin, and it is effective only at the conclusion of any appeals the government files. The government appealed to the United States Court of Appeals for the Seventh Circuit [Docket No. 14-1152]. The court held oral arguments on September 9, 2014.

If a minister or retired minister satisfies the requirements for the rental allowance exclusion, he or she may exclude the amounts used for housing for income tax purposes.

I hope this information is helpful. If you need further information, please contact me or
at () .

Sincerely,

Paul J. Carlino
Chief, Employment Tax Branch 1
Office of Division Counsel/Associate
Chief Counsel
(Tax Exempt & Government Entities)



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

November 3, 2014

CONEX-132268-14

UIL: 107.00-00

The Honorable Bob Goodlatte
Member, U.S. House of Representatives
916 Main Street, Suite 300
Lynchburg, VA 24504

Attention:

Dear Congressman Goodlatte:

I am responding to your inquiry dated October 6, 2014, on behalf of your constituent, . She had a follow-up question to our response dated September 22, 2014, about the income tax exclusion for a minister's housing allowance.

Section 107(a) 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, including utilities, furnished to him or her as a part of his compensation
- The rental allowance paid to him or her as part of his or her compensation to the extent such allowance is used by him or her to rent or otherwise provide a home

The minister is not required to actually "rent" a home. If a minister or retired minister satisfies the requirements for the housing allowance exclusion, he or she may exclude the amounts actually used for housing from income for federal income tax purposes. Again, for reference, below is general information about the minister's housing allowance exclusion.

A minister may exclude rental allowance paid as part of compensation to the extent the minister uses it to rent or provide a home and to the extent the allowance does not exceed the fair rental value of the home, including furnishings and utilities. [Section 107 of the Internal Revenue Code (the Code)]. A retired minister may exclude a housing allowance paid as part of compensation for past services, to the extent the minister uses it for expenses directly related to providing a home. [Revenue Ruling 63-156, 1963-2 C.B. 79, and Revenue Ruling 75-22, 1975-1 C.B. 49].

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To qualify for the income tax exclusion, an individual must be a “minister.” A “minister” is authorized to administer sacraments, preach, and conduct worship services. In addition, the minister must be licensed, commissioned, or ordained. [Sections 1.107-1(a) and 1.1402(c)-5 of the Treasury Regulations].

The amount of the allowance must be designated pursuant to official action taken by the employing church or other qualified organization before the payment is made. [Section 1.107-1(b) of the Treasury Regulations].

I hope this information is helpful. If you need further information, please contact me or at () .

Sincerely,

Paul J. Carlino
Chief, Employment Tax Branch 1,
Office of Division Counsel/Associate
Chief Counsel
(Tax Exempt and Government Entities)