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The Honorable Brett Guthrie
U.S. House of Representatives
Washington, DC 20515

Attention:

Dear Representative Guthrie:

I'm responding to your inquiry dated April 17, 2019, on behalf of your constituent, . He asked for clarification on the tax policy for members of the clergy. He also explained that the tax law poses a burden for him because it lacks clarity in defining whether a minister is classified as an employee or a self-employed individual.

I appreciate concerns. Unfortunately, we don't have enough information to determine whether tax burden is higher than a similarly situated individual who is not a member of the clergy. Many factors can affect a minister's tax burden, including whether he or she is considered an employee or a self-employed individual, whether the church provides housing, and whether the minister is eligible to deduct various expenses.

We can, however, provide general information on federal income taxes and Social Security and Medicare taxes that we believe is relevant to your inquiry. In addition, can find much of the information in [Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers](#) (enclosed).

Employee Versus Self-Employed

A minister may be either an employee or a self-employed individual for federal income tax purposes. The Internal Revenue Code (Code) does not define "employee" for federal income tax purposes. The determination of whether an individual is an employee is based on common-law rules and involves a fact-based, multi-factor inquiry. A summary of the common-law rules and the factors involved can be found in [Publication 15-A, Employer's Supplemental Tax Guide](#) (enclosed).

For ministers treated as employees for federal income tax purposes, churches (in their capacity as employers) are not required to withhold taxes on remuneration paid to ministers for services in the exercise of their ministry. See Code Section 3401(a)(9). A minister and church may nonetheless enter into a voluntary withholding agreement under Code Section 3402(p) to cover any federal income taxes that may be due.

In contrast, ordained, commissioned, or licensed ministers are generally treated as self-employed for Social Security and Medicare tax purposes regardless of whether they are common-law employees for income tax purposes. Social Security and Medicare taxes are collected under two systems. Under the Federal Insurance Contributions Act (FICA), an employee and their employer each pay half of the taxes. Under the Self-Employment Contributions Act (SECA), a self-employed individual pays all the taxes.

A minister is not generally covered by FICA because services performed by a duly ordained, commissioned, or licensed minister in the exercise of his ministry are generally excepted from the statutory definition of “employment” under Section 3121(b)(8)(A) of the Code.

However, Section 1402 of the Code explains that services performed by a duly ordained, licensed, or commissioned minister in the exercise of his ministry are covered under SECA, unless the minister has qualified for the exemption from self-employment tax. Section 1402(e) provides for a limited exemption if a minister is conscientiously opposed to public insurance when certain other related qualifications are met, including timely filing a [Form 4361, Application for Exemption from Self-Employment Tax for use by Ministers, Members of Religious Orders, and Christian Science Practitioners](#).

The Tax Court, in Silvey v. Commissioner, T.C. Memo 1976-401, observed that “Congress chose not to place the onus of participation in the old-age and survivors insurance program upon the churches.” This explains the reason for treating a minister as self-employed for Social Security purposes as it relates to services performed in the ministry.

Exemption from Self-Employment Tax for Ministers

Ministers were generally excluded from Social Security coverage (and therefore excluded from Social Security tax) under the original Social Security Act of 1935. The Social Security Amendments of 1954 added voluntary opt-in coverage for ministers as self-employed individuals subject to SECA, but not as employees under FICA.

In making this change, Congress wanted to allow ministers who desired Social Security coverage to receive it, but as noted above, chose not to place the burden of the FICA tax upon churches. See also S. Rep. 83-1987, 83rd Cong., 2nd Sess. 3718 (1954). The Social Security Amendments of 1967 changed this opt-in system into a system in which ministers had to opt-out of coverage.

To opt-out of Social Security coverage, a minister must meet several conditions, including filing a timely Form 4361 and being conscientiously opposed to public

insurance because of religious considerations. The full list of criteria can be found in [Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers](#) (referenced earlier, and attached). See Sections 1.1402(e)-2A to 1.1402(e)-5A of the Income Tax Regulations. Once the exemption is approved, it is irrevocable.

Form 4361 is due by the date the minister's income tax return is due, including extensions, for the second tax year in which both of the following is true:

- The minister had net earnings from self-employment of at least \$400; and
- Any part of those net earnings was from ministerial services performed as a minister, member of a religious order, or Christian Science practitioner or reader.

See Section 1.1402(e)-3A of the Income Tax Regulations. The two years do not have to be consecutive.

Income Tax Deductions

For federal income tax purposes, the distinction between being an employee or a self-employed individual is relevant to whether a minister may deduct expenses on Schedule C (Form 1040) as business expenses (if the minister is self-employed) or only as miscellaneous itemized deductions on Schedule A (Form 1040) (if the minister is an employee), subject to the 2-percent floor. See Rev. Rul. 80-110. Note, however, that Code Section 67(g) suspends miscellaneous itemized deductions for tax years beginning after December 31, 2017, and before January 1, 2026.

A self-employed person is entitled to an income tax deduction under Section 164(f) of the Code for one-half of SECA taxes imposed under Section 1401 (but not the Additional Medicare Tax imposed under Section 1401(b)(2)). The deduction under Section 164(f) is taken above the line and is available for income tax purposes only. Individuals who are self-employed for Social Security purposes can deduct half of their actual self-employment taxes from gross income on line 27 of the 2018 Schedule 1 (Form 1040), Additional Income and Adjustments to Income.

Parsonage Allowances

may find it helpful to know that Code Section 107 allows a "minister of the gospel" to exclude from his or her gross income either the rental value of a church-provided home or the rental allowance it pays to minister. The government successfully defended the constitutionality of the rental allowance exclusion (generally referred to as the "parsonage allowance") in a recent court case, [Gaylor v. Mnuchin](#), 919 F.3d 420 (7th Cir. 2019). The opinion was released on March 15, 2019.

The home or rental allowance must be for payment for services that ordinarily are the duties of a minister of the gospel and the religious organization must designate the payment as a rental allowance before it makes the payment in order to qualify, among other requirements. See Sections 1.107-1(a) and 1.1402(c)-5(b)(2) of the Income Tax

Regulations. Additional information on satisfying the requirements for a parsonage allowance can be found in [Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers](#) (referenced earlier, and attached).

If a minister satisfies the requirements for the housing allowance exclusion, he or she may exclude the amounts used for housing from gross income. Moreover, if a minister pays interest on a mortgage, or property (real estate) taxes on the minister's home, then the deductions allowable under Section 163 for mortgage interest and Section 164 for property taxes will not be denied under Section 265, even though portions of the amounts spent on mortgage interest or property taxes may have been paid using a housing allowance that is excludable from gross income under Section 107. See Rev. Rul. 87-32.

However, Code Section 164(b)(6)(B) limits the deduction for aggregate state and local real property, personal property, and income taxes to \$10,000 for tax years beginning after December 31, 2017, and before January 1, 2026. Also, any parsonage allowance excluded from gross income for federal income tax purposes due to Section 107 is not excluded for self-employment tax purposes as set forth in Code Section 1402(a)(8).

Again, I've provided certain general principles of the law in this letter. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2019-1, Section 2.04, 2019-1 IRB 1 (Jan. 2, 2019). If you have any additional questions, please contact me at

Sincerely,

Sydney L. Gernstein
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Office of the Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and
Employment Tax)

Enclosure:

IRS Publication 15-A
IRS Publication 517