



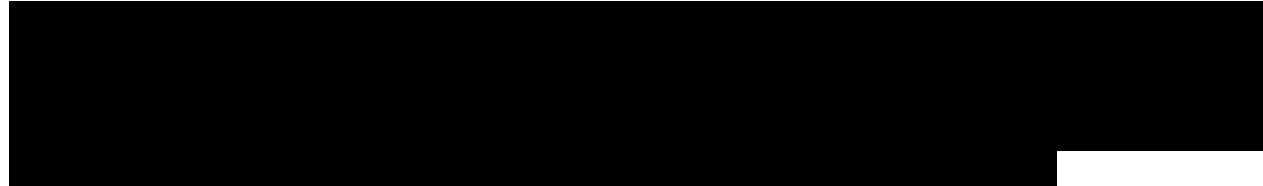
DEPARTMENT OF THE TREASURY
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OFFICE OF
CHIEF COUNSEL

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Dear 

This is in response to your inquiry to Commissioner Rossotti, dated June 13, 2002, in which you request assistance regarding whether the Clergy Housing Allowance Clarification Act of 2002 (the "Act") would allow Veteran Administration Chaplains to qualify for a housing allowance that does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

Section 107 of the Internal Revenue 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 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.

Section 1.107-1(a) of the Income Tax Regulations provides, in part, that for purposes of section 107 of the Code the service performed by a qualified minister as an employee of the United States (other than as a chaplain in the Armed Forces, whose service is considered to be that of a commissioned officer in his capacity as such, and not as a minister in the exercise of his ministry), or a State, Territory, or possession of the United States, or a political subdivision of any of the foregoing, or the District of Columbia, is in the exercise of his ministry provided the service performed includes such services as are ordinarily the duties of a minister.

Section 1.107-1(a) of the regulations provides that in order to qualify for the exclusion provided by section 107 of the Code, 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 in determining whether the minister is performing services in the exercise of his or her ministry. Regulation section 1.107-1(a) also provides that 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 will be considered the duties of a minister for purposes of section 107 of the Code.

Section 1.107-1(b) of the regulations provides, in part, that the term "rental allowance" means an amount paid to a minister to rent or otherwise provide a home if such amount is designated as rental allowance pursuant to official action taken in advance of such payment by the employing church or other qualified organization when paid after December 31, 1957. The designation of an amount as rental allowance may be evidenced in an employment contract, in minutes of or in a resolution by a church or other qualified organization or in its budget, or in any other appropriate instruction evidencing such official action.

The Act amends section 107 of the Code by limiting the amount a minister may exclude from gross income for "rental allowance paid to him as part of his compensation" to rent or provide a home. The amendment clarifies that the amount to be excluded may "not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities."

The issue of whether a civilian chaplain employed by the Federal Government as a General Schedule (GS) employee to serve in a Veterans Administration hospital may exclude from gross income any portion of his pay as a rental income under section 107 of the Code, was considered in Rev. Rul. 72-462, 1972-2 C.B. 76. The ruling held that a GS employee may not exclude any portion of his pay as a rental allowance under section 107 of the Code. The basis for this finding was that no portion of a GS pay rate for a chaplain or any other GS employee is provided as a rental allowance or as anything other than basic pay for the work the employee performs. The ruling notes that the Federal Pay comparability process compares only basic pay and does not take into consideration extraneous benefits such as rental allowances for ministers, nor does it compare pay for individual occupations. Thus, rather than comparing pay for Federal chaplains with pay for non-Federal clergymen, the comparability process compares pay for a GS grade with average basic pay for work of a similar level of difficulty and responsibility in several occupations in the private sector.

Furthermore, the ruling indicates that there are no statutory provisions relating to GS employees authorizing anyone in a government agency to designate part of a minister's government compensation as a rental allowance as required by section 1.107-1(b) of the regulations. Thus, while chaplains (except for chaplains in the Armed Forces) performing ministerial services are not specifically excluded from qualifying for the rental allowance exclusion under section 107, there are presently no statutory provisions authorizing anyone in a government agency to designate part of a chaplain's government compensation as a housing allowance.

I hope this information is helpful. If we can be of further assistance in this matter, please contact me at (202) 622-6040.

Sincerely,
Will E. McLeod
Chief, Employment Tax Branch 1
Division Counsel/Associate Chief Counsel
(Tax Exempt & Government Entities)