

KM Newsletter

Church Law

May 18, 2015

Ministerial Housing Allowance: A Brief Overview

By Zack R. Gardner

The Internal Revenue Code (“Code”) excludes “ministerial housing allowances” from gross income for income tax purposes. Code § 107. The ministerial housing allowance is equal to either:

- (1) the rental value of a home furnished to a minister as part of the minister’s compensation; or
- (2) 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 and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

“Ministers” and “Ministerial” duties

A ministerial housing allowance may only be taken by a minister performing what are considered ministerial duties. The term “minister” includes individuals who are duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination.

Treas. Reg. § 1.107-1(a) provides that the following are examples of "ministerial" activities for Code § 107 purposes:

- the performance of sacerdotal functions,
- the conduct of religious worship,
- the administration and maintenance of religious organizations and their integral agencies,
- the performance of teaching and administrative duties at theological seminaries,
- 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

This is not an exhaustive list. The important thing to remember is that the activity must be what is customarily considered “ministerial”.

The Designation Requirement

The housing allowance must be designated as such pursuant to official action taken by the employing church or other qualified organization. Other qualified organizations include church-affiliated schools, universities, nursing homes, and hospitals. The key to determining whether an organization is a “qualified” organization lies in the amount of ongoing supervision, control, or oversight the designating organization has in the performance of the minister’s duties and whether the organization has some religious purpose. *See* Boyd v. Commissioner, 42 T.C.M. 1136 (1981) (holding that a chaplain employed by a police department receiving a housing allowance designated by a federation of churches that organized a chaplaincy program was receiving the allowance from a “qualified organization”).

Private letter rulings and Internal Revenue Rulings have also held that religious nonprofit organizations not affiliated with any particular church or denomination could be “qualified organizations.” The determination depends on the particular facts and circumstances. *See, e.g.* Rev. Rul. 78-172, 1978-1 C.B. 35; *see also* Rev. Rul. 68-68, 1968-1 C.B. 51 (value of apartment furnished minister could not be excluded where employer was not a religious organization nor integral agency); Rev. Rul. 72-606, 1972-2 C.B. 78 (minister employed by old age home that is affiliated with but not controlled by a church may not exclude rental allowance under IRC 107).

If you have any questions, please don’t hesitate to call Rob Quillin, Bill Mason, Zack Gardner, or Michael Crowder at (865) 546-7311 or email us at quillinr@kmfpc.com, wemason@kmfpc.com, zgardner@kmfpc.com, or mcrowder@kmfpc.com.

Kennerly Montgomery is a general practice law firm that has provided legal advice to clients for almost 100 years. The attorneys at Kennerly Montgomery have the knowledge and skill necessary to guide religious institutions and their members through a variety of issues including those related to church benefit plans; ministerial housing allowances; church-state disputes; and local, state, and federal taxation. Our attorneys recognize that although churches and church-associated organizations share similar characteristics to other nonprofits, they also have special issues unique to them. Our firm understands these issues and works diligently to resolve them.



550 MAIN STREET, FOURTH FLOOR | P.O. BOX 442 | KNOXVILLE, TN 37901
PH (865) 546-7311 | FX (865) 524-1773 | WWW.KMFPC.COM