

Ministerial Housing Allowance Under Attack Once Again

The Freedom From Religion Foundation (FFRF) has filed a new lawsuit in federal court challenging the constitutionality of the ministers' housing allowance exclusion.

Under current law (Internal Revenue Code, Sec. 107), qualified ministers may exclude from income tax, within certain limits, the fair rental value of church-provided housing, plus the actual cost of utilities or the housing allowances paid to them and used to cover the cost of providing a home for themselves and their family. In their filing with the Court, FFRF charges that the law unconstitutionally provides "preferential and discriminatory tax benefits" and violates equal protection principles.

This attack on the housing allowance exclusion is the latest attempt by the Group, which describes its mission and purpose as being "...to promote the constitutional principle of separation of state and church, and to educate the public on matters relating to non-atheism."

In 2014, a U.S. Appeals Court denied a similar challenge by FFRF on the procedural ground of "standing," saying in essence that FFRF could not proceed with its case at that time because its leadership had not suffered any "concrete and particularized" injury from the law having never actually been denied the benefit of a housing allowance by the IRS. The court went on to suggest that FFRF might have a case and (could) gain actual standing under the law if its leaders were to pay income taxes on a designated housing allowance, submit a claim for refund to the IRS, and then sue if the IRS rejected or failed to act upon their claims.

According to the latest court filings by FFRF this appears to exactly what they have done as this latest suit is claiming standing has now been met because their leaders did pay taxes on income received and designated for housing purposes and were then denied refunds after requesting them from the IRS.

Immediate impact for ministers and churches?

This lawsuit is still in the early stages so it is too early to know just how the Court might look upon this latest challenge. The likelihood that current year housing allowances might be affected by an unfavorable ruling is there, of course but probably remote. In any case, it is clear that this is the most significant challenge raised to date against the "housing allowance" and will bear watching as the case unfolds.

*Sources: Freedom From Religion Foundation v. Lew, No. 16-CV-215 (W.D. Wis. Apr. 6, 2016)
Evangelical Council for Financial Accountability, April 2016 Newsletter*

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