

Minister Housing Allowance is Constitutional

Ministers and other called workers have the opportunity to receive employer provided housing benefits. If the conditions under IRC Section 107 are met, these benefits can be nontaxable for income tax purposes. (They are subject to self-employment taxes.) Nonclergy must generally pay income tax on the value of their employer-provided housing unless they meet certain requirements such as that the housing be provided “on the employers property” and “for the convenience of the employer.”

The Freedom From Religion Foundation Inc. (FFRF) challenged, on behalf of one or more employees, that the housing benefit exclusion for ministers and other called workers was a violation of the First Amendment of the U.S. Constitution. They stated this provision provided a tax benefit specifically for ministers.

Originally FFRF took the issue to the United States District Court for the Western District of Wisconsin back in 2014 and received a favorable ruling stating the housing allowance was unconstitutional. The 7th Circuit Court of Appeals ruled the plaintiffs did not have standing to challenge Section 107 since the plaintiffs were not ministers and dismissed the case.

In 2018 one or more of FFRF employees took the issue to court. FFRF represented them in the case. The United States District Court for the Western District of Wisconsin again ruled in favor of FFRF. This time the 7th Circuit Court of Appeals listed to the case and ruled the housing allowance provision of IRC Section 107 was constitutional and was not created specifically to give ministers a tax benefit. The Court stated the creation of this section was to put ministers on a par with nonclergy in the right to have nontaxable housing in certain cases.

Therefore, as it currently stands, the housing allowance exclusion under Section 107 is constitutional. This case may be appealed.

Freedom From Religion Foundation Inc, 7th Circuit Court of Appeals, March 15, 2019

This text has been shared with you courtesy of: David & Mary Mellem, EAs & Ashwaubenon Tax Professionals, 920-496-1065 (fax 920-496-9111).

©2019 Ashwaubenon Tax Professionals. No reproduction of this article is permitted without the express consent of Ashwaubenon Tax Professionals, 2140 Holmgren Way, Suite 1040, Green Bay, WI 54304.

We do not sell, give, or in any way share email addresses with anyone. If you would like to be removed from our email list, send us an email to that effect. If someone else would like to be added to our list, have them send us an email.