CLERGY HOUSING BENEFITS FOR COMMISSIONED PASTORS

Summary

In the United States it appears appropriate for RCA commissioned pastors to claim the benefit of the clergy housing allowance (although no definitive ruling or other guidance is available from the United States Internal Revenue Service). In Canada useful guidance is available from the Canada Revenue Agency. It indicates that it is appropriate for RCA commissioned pastors to claim the clergy residence deduction, provided he or she is engaged in a typical ministry function. Ultimately, however, each individual must decide independently whether to claim the clergy housing allowance (in the United States) or clergy residence deduction (in Canada) in light of his or her particular situation.

Introduction

The report of the Commissioned Pastor Task Force to the 2010 General Synod (MGS 2010, p. 142-148) included the following request:

The task force asks the General Synod Council to direct the general secretary to appoint a staff person to make widely available the legal opinion regarding the housing allowance in the U.S. and Canada (e.g., website, information to classis clerks, etc.).

(MGS 2010, p. 148).

The “opinion letter” to which the task force refers is somewhat dated, discusses the clergy housing allowance (created by the United States Internal Revenue Code) but not the clergy residence deduction (created by the Canada Income Tax Act), and does not contemplate that the RCA has more than one ministerial office (both ordained minister of Word and sacrament and commissioned pastor). Consequently, its distribution would not fully accomplish the purposes apparently intended by the task force. Those purposes are important ones, however, and therefore this resource has been prepared.

Both United States and Canadian law provide favorable tax treatment to ministers related to their housing. In the United States it is commonly referred to as the “clergy housing allowance.” In Canada it is commonly referred to as the “clergy residence deduction.” This resource is intended to address both. When discussed collectively they are referred to as the “clergy housing benefit.”

The principal purpose of this resource is to provide a general description of the clergy housing benefits and to focus particular attention on the question the task force apparently had in mind—namely, whether the benefit is available to commissioned pastors. This resource is not an
exhaustive discussion of clergy housing benefits (including how to claim them or the housing-related costs and expenses to which they pertain), and should not be relied upon for specific legal or tax advice. Rather, individuals and assemblies should consult with their respective legal, financial and tax advisors regarding their particular situations.

United States – The Clergy Housing Allowance

1. **Description and Basis for the Clergy Housing Allowance.** The clergy housing benefit provided under United States law is called the “clergy housing allowance.” It exists as a result of certain provisions in the United States Internal Revenue Code (26 U.S.C.). They permit a portion of the compensation paid to a “minister of the gospel” (whether in the form of actual housing provided to the minister or monetary compensation provided to the minister that is specifically designated for his or her housing) to be excluded from “income” for purposes of determining taxable income and, at the same time, permit deductions for certain housing-related expenses that typically are deductible, even though the expenses are paid using income that has not been subject to income taxation.¹

2. **To Whom the Clergy Housing Allowance Applies.** When describing those who may benefit from the clergy housing allowance, Internal Revenue Code (Code) Sections 107(a) and 107(b) simply say “minister of the gospel.” The United States Internal Revenue Service (I.R.S.) provides no guidance regarding the precise meaning of that term. Some guidance is provided through court decisions and I.R.S. regulations and resources. For example, the United States Tax Court has concluded that although the term is phrased in Christian terms, “Congress did not intend to exclude those persons who are the equivalent of ‘ministers’ in other religions.”² Additionally, other provisions of the Code (such as those related to social security) define the term “minister” and those definitions generally have been used for purposes of the clergy housing allowance.³

Because of the way the I.R.S. defines “minister,” the availability of the clergy housing allowance to individuals other than ordained ministers of Word and Sacrament will depend upon whether the individual “is able to perform substantially all of the religious functions of an ordained minister.” Unfortunately, this determination must be made on a “case by case” basis, and the I.R.S. no longer provides determination letters regarding clergy status.⁴ Before it decided to no longer issue determination letters, however, the I.R.S. did issue such a ruling to the United Methodist Church (UMC). The ruling relates to the tax status of lay pastors (referred to in the UMC as “ordained deacons”). This clergy classification in the UMC is remarkably similar to the RCA’s commissioned pastor. The IRS determined that the UMC’s ordained deacons would be treated as “ministers of the gospel.” It was significantly influenced by the fact that the UMC lay pastor is ordained by the church, has authority to conduct worship, has authority to administer the Sacraments, has authority to conduct weddings and funerals, and is a member of a regional
body in that denomination. Other than the performance of Christian marriage, all of these factors are present for RCA commissioned pastors. Authority to perform Christian marriage (which is not a sacrament in the RCA) may exist as well if granted by the local church’s consistory.5 (Of course, one’s authority to perform marriages is, as a civil matter, also subject to applicable state law.) Consequently, while no definitive ruling or other guidance is available from the IRS, it appears appropriate for RCA commissioned pastors to claim the benefit of the clergy housing allowance.

3. **Resources for Applying the Clergy Housing Allowance in Specific Situations.** The following are additional resources regarding whether the clergy housing allowance is available in a particular situation, and if so, how to claim, document and calculate it, the housing costs to which it applies, and similar issues.

   (c) Part One (“Law and the Pastor”), Chapter 1 (“Definitions and Status”) of R. Hammar, Pastor, Church and Law (Third Edition)
   (d) The “Taxation” section (Section 8) of the Legal Resource Manual of the Presbyterian Church (USA) at www.pcusa.org/resource/legal-resource-manual/
   (e) The discussion of “Housing Allowance for Clergy” in the Human Resources section of the Evangelical Lutheran Church in America website (www.elca.org/Who-We-Are/Our-Three-Expressions/Churchwide-Organization/Human-Resources/Employee-Benefits/Clergy-Housing-Allowance.aspx)
   (f) The “Housing Allowance Q &As” section of the Tax Packet provided by the General Council on Finance and Administration of the United Methodist Church (www.gcfa.org/PDFs/TaxPacket2006(Current)/Tax_Information_for_Clergy/Housing_Allowance/HousingAllowanceQ&As.pdf)

**Canada – The Clergy Residence Deduction**

1. **Description and Basis for the Clergy Residence Deduction.** Under Canadian law the clergy housing benefit is called the “clergy residence deduction.” It exists as a result of Section 8 (“Deductions”) of the Canada Income Tax Act.6 It generally provides for an exclusion from taxable income of (a) the value of housing that is provided by the employer or (b) the fair rental value (including utilities) of an owned residence.
2. To Whom the Clergy Residence Deduction Applies. Whether an individual may claim the clergy residence deduction depends upon two things – namely, the individual’s “status” and the individual’s “function.” In the province of Quebec a “usage” test must also be met. Presently the RCA has no churches in Quebec. Accordingly, the usage test will not be discussed.

A. Status Test

To claim the clergy residence deduction an individual must be either (a) a member of the clergy, (b) a member of a religious order, or (c) a regular minister of a religious denomination. Each of these terms have been defined and clarified through various decisions by the Tax Court of Canada. The first and third categories (“member of the clergy” and “regular minister of a religious denomination”) seem most applicable to RCA commissioned pastors, and therefore are the ones addressed here.

The Canada Revenue Agency has provided significant guidance regarding what constitutes a “member of the clergy” and a “regular minister of a religious denomination” (for Canadian income tax purposes). Given the characteristics of commissioned pastors in the RCA, they appear to be either a “member of the clergy” or a “regular minister” as those terms are defined by the Canada Revenue Agency. Specifically, they are set apart from the other members of the RCA as spiritual leaders, their ordination is a formal or legitimate act of recognition, and service as a commissioned pastor requires a serious and long-term commitment to the ministry (all of which are characteristics included in the definition of “member of the clergy”). Moreover, they are authorized or empowered to perform spiritual duties, conduct religious services, administer sacraments and carry out similar religious functions, are appointed or recognized by a body or person with the legitimate authority to appoint or ordain ministers on behalf of or within the religious denomination, and are in a position or appointment of some permanence (all of which are characteristics included in the definition of “regular minister”). It therefore seems reasonable to conclude that under the “status” test commissioned pastors are entitled to the clergy residence deduction.

B. Function Test

In addition to holding a particular status, to claim the clergy residence deduction the individual must also perform a particular function. Specifically, he or she must be either (a) in charge of, or minister to, a diocese, parish or congregation, or (b) be engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination. Here again, the Canada Revenue Agency provides significant guidance.

While each individual’s situation is unique and must be compared to the guidance provided in the bulletin, the agency’s interpretations tend to be rather broad. “Ministering” is described as a “very broad concept of serving or attending to the needs of a congregation, diocese or parish, or its individual members. . . . If a person who meets the status test is employed within a congregation, he or she is considered to be ministering to a congregation if he or she is fulfilling
a pastoral or ministerial role in the manner requested by that congregation. If a person who meets the status test is employed by a religious organization outside the order or religious denomination, he or she is considered to be ministering to a congregation such as a church, a chaplaincy audience, or a disadvantaged group if he or she is fulfilling a pastoral or ministerial role consistent with the religious ministry of the organization in which such person has status.” Those who minister on a part-time or assistant basis and those performing specialized ministering satisfy the function test as long as ministering to congregations is an integral part of their employment responsibilities and expectations.”

A "congregation" is similarly defined rather broadly – “not . . . by any particular church structure, by territorial boundaries nor by the number of people gathered in one place [but instead as] an assemblage or gathering of persons to whom a minister provides spiritual counseling, advice, illumination and inspiration.”

Accordingly, if a commissioned pastor is carrying out the functions they are authorized to perform under the RCA’s Book of Church Order, he or she should satisfy the “function” test as well.

3. **Resources for Applying the Clergy Residence Deduction in Specific Situations.**

(a) General guidance regarding the Clergy Residence Deduction is available from the Canada Revenue Agency in its Interpretation Bulletin No. IT-141R. It is available online at http://www.cra-arc.gc.ca/E/pub/tp/it141r-consolid/README.html.

(b) The form that is used when claiming the clergy residence deduction is T-1223. It is available online at http://www.cra-arc.gc.ca/E/pbg/tf/t1223/README.html.

(c) The Canadian Council of Christian Charities offers its members online resources on an extensive range of topics, including the clergy residence deduction. Its website is www.cccc.org.

(d) Unlike in the United States, in Canada organizations may request an advance tax ruling. The process is described in Canada Revenue Agency Information Circular 70-6R5. It is available online at http://www.cra-arc.gc.ca/E/pub/tp/ic70-6r5/README.html.

---

1 Specifically, (a) Internal Revenue Code §107(1) excludes from a minister’s gross income the rental value of a residence that is provided to the minister as a part of his or her compensation; (b) Internal Revenue Code §107(2) excludes from a minister’s gross income the monetary compensation that is paid to a minister and specifically designated to the payment of housing-related costs, to the extent it is actually used to rent or otherwise provide a home, (c) IRS regulations and publications expand upon the provisions of §107(2) by stating that the amount that may be excluded is the lesser of (i) the amount actually used to provide the housing, (ii) the amount formally designated as a housing /rental allowance, and (iii) the fair rental value of the home (including such things as furnishings, utilities, etc.), and (d) in the case of a minister who owns (or is purchasing over time) his or her own home (vs. living in a residence provided as a part of his or her compensation), Internal Revenue Code §265(a)(6)(B) permits the minister to deduct mortgage interest and property taxes he or she has paid, even if they are paid using the tax-exempt housing allowance paid to the minister under Internal Revenue Code §107(2).

I.R.S. Publication 517 (“Social Security and Other Information for Members of the Clergy and Religious Workers”), defines “ministers” as follows:

“Ministers are individuals who are duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination. They are given the authority to conduct religious worship, perform sacerdotal functions, and administer ordinances or sacraments according to the prescribed tenets and practices of that church or denomination.

“If a church or denomination ordains some ministers and licenses or commissions others, anyone licensed or commissioned must be able to perform substantially all the religious functions of an ordained minister to be treated as a minister for social security purposes.”

4 See I.R.S. Revenue Procedure 2010-3 (January 4, 2010). Section 3 states that “whether an individual is a ‘minister of the gospel’ for Federal tax purposes” is an area in which ruling or determination letters will not be issued.

5 “The commissioned pastor shall be authorized to preach the Word and celebrate the sacraments. The classis may authorize the commissioned pastor to any or all of the following functions:

a. Serve as presiding officer of the consistory, at the request of a consistory or with its consent, under the supervision of the classis supervisor.

b. Preside at the ordination and installation of elders and deacons.

c. Perform a service of Christian marriage when approved by consistory and subject to state and provincial law.”

BCO Chapter 1, Part II, Article 14, Sections 7 and 8.

6 Section 8(1)(c) of the act provides in relevant part as follows:

“In computing a taxpayer’s income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto . . .

“Clergy residence

“(c) where, in the year, the taxpayer

“(i) is a member of the clergy or of a religious order or a regular minister of a religious denomination, and

“(ii) is (A) in charge of a diocese, parish or congregation, (B) ministering to a diocese, parish or congregation, or (C) engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination,

“the amount, not exceeding the taxpayer’s remuneration for the year from the office or employment, equal to

“(iii) the total of all amounts including amounts in respect of utilities, included in computing the taxpayer’s income for the year under section 6 in respect of the residence or other living accommodation occupied by the taxpayer in the course of, or because of, the taxpayer’s office or employment as such a member or minister so in charge of or ministering to a diocese, parish or congregation, or so engaged in such administrative service, or

“(iv) rent and utilities paid by the taxpayer for the taxpayer’s principal place of residence (or other principal living accommodation), ordinarily occupied during the year by the taxpayer, or the fair rental value of such a residence (or other living accommodation), including utilities, owned by the taxpayer or the taxpayer’s spouse or common-law partner, not exceeding the lesser of
“(A) the greater of

“(I) $1,000 multiplied by the number of months (to a maximum of ten) in the year, during which the taxpayer is a person described in subparagraphs (i) and (ii), and

“(II) one-third of the taxpayer’s remuneration for the year from the office or employment, and

“(B) the amount, if any, by which

“(I) the rent paid or the fair rental value of the residence or living accommodation, including utilities exceeds

“(II) the total of all amounts each of which is an amount deducted, in connection with the same accommodation or residence, in computing an individual’s income for the year from an office or employment or from a business (other than an amount deducted under this paragraph by the taxpayer), to the extent that the amount can reasonably be considered to relate to the period, or a portion of the period, in respect of which an amount is claimed by the taxpayer under this paragraph;”

7 See Canada Revenue Agency Income Tax Interpretation Bulletin No. IT-141R (consolidated). The complete text of the bulletin is available online at http://www.cra-arc.gc.ca/E/pub/tp/it141r-consolid/it141r-consolid-e.html. Paragraphs 3 through 7 of the bulletin discuss the meaning of “member of the clergy” and “regular minister” as follows:

¶ 3. Whether a person is a ‘member of the clergy’ or a ‘regular minister’ depends upon the structure and practices of the particular church or religious denomination.

¶ 4. A ‘member of the clergy’ is a person set apart from the other members of the church or religious denomination as a spiritual leader. It is not necessary that the process of appointment be referred to as ordination or that the appointment be by someone higher up in the ecclesiastical hierarchy; it may be done by the congregation itself. It is sufficient that there be a formal or legitimate act of recognition, and it requires a serious and long-term commitment to the ministry. Priests, pastors, ministers, rabbis, imams, commended workers and other persons who have been commended, licensed, commissioned or otherwise formally or legitimately recognized for religious leadership within their religious organization may be members of the clergy.

¶ 5. A ‘regular minister’ is a person who

- is authorized or empowered to perform spiritual duties, conduct religious services, administer sacraments and carry out similar religious functions. Religious functions may include participation in the conduct of religious services, the administration of some of the rituals, ordinances or sacraments, and pastoral responsibilities to specific segments of the religious organization;
- is appointed or recognized by a body or person with the legitimate authority to appoint or ordain ministers on behalf of or within the religious denomination; and
- is in a position or appointment of some permanence.

¶ 6. In the absence of a legitimate appointment or recognition, the mere performance of the duties of a minister will not suffice to constitute a ‘regular minister’.

¶ 7. Deaconesses and deacons, elders, commissioned officers of the Salvation Army, chaplains (including female chaplains in the Roman Catholic church) and cantors may be recognized as regular ministers depending upon the structure and practices of the particular church or religious denomination. This is not an all inclusive list.”

8 Paragraphs 13 through 19 of Income Tax Interpretation Bulletin No. IT – 141R discusses in detail what constitutes “ministering,” a “congregation,” “specialized ministry” and “full-time administrative service.”
“Ministering

¶ 13. ‘Ministering’ is a very broad concept of serving or attending to the needs of a congregation, diocese or parish, or its individual members. This should be looked at within the context of the religious organization’s practices and expectations. If a person who meets the status test is employed within a congregation, he or she is considered to be ministering to a congregation if he or she is fulfilling a pastoral or ministerial role in the manner requested by that congregation. If a person who meets the status test is employed by a religious organization outside the order or religious denomination, he or she is considered to be ministering to a congregation such as a church, a chaplaincy audience, or a disadvantaged group if he or she is fulfilling a pastoral or ministerial role consistent with the religious ministry of the organization in which such person has status.

¶ 14. Persons who meet the status test who minister on a part-time or assistant basis and those performing specialized ministering satisfy the function test. As long as ministering to congregations is an integral part of their employment responsibilities and expectations, that activity will qualify.

“Congregation

¶ 15. A ‘congregation’ is not defined by any particular church structure, by territorial boundaries nor by the number of people gathered in one place. It is an assemblage or gathering of persons to whom a minister provides spiritual counseling, advice, illumination and inspiration. A group of students assembled for academic instruction is not a congregation. Persons who meet the status test do not need to be in charge of a single, fixed congregation. They can serve multiple congregations. Congregations can be of a diverse and fluid makeup and require neither voluntary attendance nor homogeneity of religious belief. Chaplains in hospitals, jails, the armed forces and other such organizations are generally considered to minister to congregations.

“Specialized Ministries

¶ 16. Persons who meet the status test performing specialized ministering may satisfy the function test depending on the significance of the ministry in the particular religious denomination. Recognized forms of specialized ministry may include chaplaincies, religious education within a congregation, congregational pastoral responsibilities for music or youth, ethnic focus ministries, ministries with overseas or domestic missions, and ministries to the disadvantaged or disabled. For example, given the prominence of music in the Pentecostal service and, generally, in the method of worship by members of that religious denomination, the role of minister of music assumes an importance in that church that goes far beyond that of an organist or choir master of other churches.

¶ 17. Teaching at an educational institution, whether or not it is a denominational school, college or seminary, is not by itself recognized as ministering to a congregation. However, a person who meets the status test who is otherwise engaged in a recognized and permitted ministry, may also be engaged in teaching without being disqualified for this deduction. For example, a school chaplain may also have some teaching responsibilities or a congregational minister may also take on teaching responsibilities for his or her religious denomination.

“Full-time Administrative Service

¶ 18. ‘Administrative service’ generally describes the functions of determining organizational policies and coordinating various activities of the organization at the management level. It is not limited to the senior level of management of an organization. Performance of specific staff (i.e., support) functions such as accounting, grounds keeping, information technology and clerical work does not qualify as administrative service. A person who meets the status test who is employed in a full-time administrative position is considered to be working exclusively and full-time in a qualifying function even if, in addition to administrative responsibilities, the person also engages in incidental ministering activities that would satisfy the function test. Both the words exclusively and full-time imply that the person does not have some other form of appointment, business or occupation that is in addition to, and impinges upon, the administrative work performed.

¶ 19. Teaching is not considered to be administrative service, whether or not it is at a denominational school, college or seminary. Occasional or incidental teaching will not, however, disqualify a person whose full-time responsibility is qualifying administrative service.”