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Rev. Phil Hodson

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Phil,

In response to your recent question regarding any potential threshold on a minister's housing allowance, please be advised of the following:

Section 107(2) of the Internal Revenue Code contains the “parsonage exclusion,” which excludes from gross income housing furnished to a “minister of the gospel” as part of their compensation. The text of this section specifically states, “the rental allowance paid to him as part of his compensation, to the extent used by him 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.”

The IRS has stated that there are no limitations on how much of a minister's compensation can be designated by his or her employing church as a housing allowance. As set out in the text of IRC 107, the only limitation is that the amount of the housing allowance cannot exceed the lesser of: 1) actual housing expenses or 2) the fair market value of the home. Incidentally, the cap on the exclusion under Section 107(2) equal to the fair rental value of a home, including furnishings, appurtenances and utilities, was added by Congress in the Clergy Housing Allowance Clarification Act of 2002 in response to constitutional concerns over the holding in *Warren v. Commissioner*, where the Tax Court determined that the language of the statute did not impose any such restriction. Had the legislature intended any

other limitation, it would have been included here.

Further, the Tax Code contains no specific percentage or dollar limitation as to how much can be designated as housing allowance. A reasonable designation could even be up to 100 percent of the cash compensation. The only caveat I might offer is that a minister's cash housing allowance cannot exceed "reasonable compensation." Therefore, it is important that the compensation is proportionate to the amount of service provided.

There has been a fair amount of litigation surrounding the housing allowance since its enactment nearly 100 years ago. As recently as 2019 the Constitutionality of the housing allowance was challenged. The 7th Circuit issued a lengthy opinion which set out the history of the code section as well as a detailed constitutional analysis. At no point in the opinion did the court indicate that any limitations, other than those listed in the text of the rule, applied.

In my opinion, no threshold amount exists when setting an amount for a pastor's housing allowance, as long as the amount does not exceed the lesser of actual expenses or the fair market value of the home. I hope you find this information helpful. Please let me know if you have any other questions or need additional information.

Sincerely,



Stephanie Hudson