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OFFICE OF
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The Honorable
Member, U.S. House of Representatives

Dear Congressman _____ :

This letter is in response to your inquiry dated _____, on behalf of your constituent, _____, which was a follow up to my letter dated _____. I appreciate your continued interest in resolving _____ tax issue and your concern about the appearance of bias. You asked that we reexamine request for a determination of _____ eligibility to exclude _____ housing allowance from gross income in light of the perceived similarities between the functions and qualifications of deacons, as described in a 1998 letter ruling, and those of _____ as

I assure you that bias played absolutely no role in the determination not to provide a letter ruling to _____. The Office of Chief Counsel does not tolerate such bias, which would violate our mission to serve America's taxpayers fairly and with integrity by providing correct and impartial interpretation of the internal revenue laws and the highest quality legal advice and representation for the IRS. I take this issue very seriously and am available personally to discuss with you any concerns about the appearance of bias.

In my _____, letter to you, I invited _____ to use our letter ruling, pre-submission conference procedures and meet with us in pre-submission conference to discuss the substantive or procedural issues related to _____ request. I continue to extend this offer, and I am available for such a conference should _____ wish to discuss a letter ruling request. We do not charge a fee for a pre-submission conference. _____ or _____ representative can request a conference in writing or by telephone. I have enclosed Revenue Procedure 2005-1, section 10.07, for more details on pre-submission conference procedures. I am also providing additional information to further explain the tax issues involved in determining whether a taxpayer can exclude a housing allowance from gross income and address your concerns about the perception of bias in this area. I hope this additional information is helpful.

A minister of the gospel may exclude from gross income a housing allowance paid as part of compensation, to the extent used to rent or provide a home and to the extent the allowance does not exceed the fair rental value. Although "minister of the gospel" is phrased in Christian terms, the IRS and the courts include people who are the equivalent of ministers in other religions. To qualify for this exclusion, the individual must first have the status of a minister. Secondly, the housing allowance must be remuneration for services that are ordinarily the duties of a minister of the gospel. The IRS held in Revenue Ruling 59-270 that neither a minister of music nor a minister of education could exclude a rental allowance from gross income when neither was an ordained minister, although both were performing services related to the office and functions of a minister of the gospel.

The position of the IRS in this area involves balancing considerations of whether an individual has the status of a minister and whether the individual performs services as a minister. This position is consistent with the Code, the regulations, and court opinions that have considered the issue and is uniformly applied regardless of the specific religious beliefs involved. For example, section 107 of the Code and the underlying regulations require status as a minister in order to qualify for a housing allowance exclusion from gross income (each begins with "In the case of a minister of the gospel"). The underlying regulations (section 1.107-1) also incorporate section 1.1402(c)-5 of the Income Tax Regulations, which require that an individual be "a duly ordained, commissioned, or licensed minister of a church or member of a religious order." I also point out a few court opinions requiring the inquiry into not only whether the individual performs services that are ordinarily the duties of a minister of the gospel, but also whether the taxpayer has the status as a minister (in other words, whether the individual's church considered him a religious leader).

In *Wingo v. Commissioner*, 89 T.C. 922 (1987), the question before the U.S. Tax Court was whether an ordained deacon was a minister for purposes of self-employment taxes. In making this determination, the Court not only considered the services the taxpayer performed (the ministration of sacerdotal functions; the conduct of religious worship; and the control, conduct, and maintenance of religious organizations that are under the authority of a church or church denomination, as containing in section 1.1402(c)-5(b)(2)), but also the taxpayer's status as a minister (whether the individual's church considered him a religious leader). "In applying the three types of services, the courts also consider whether the particular church or denomination recognizes the person as a minister or religious leader. ... While the church's designation of a person as a minister, standing alone, is insufficient to determine whether he is a minister for self-employment tax purposes, it is an additional factor to be considered. When the person performs all three types of services set forth in the regulations, and is recognized as a minister or religious leader by his denomination, as here, that person is a minister for purposes of section 1402(c). In this case a higher ecclesiastical authority in The United Methodist Church did ordain and license petitioner in 1980, indicating that he was not a self-appointed or self-proclaimed minister."

In *Haimowitz v. Commissioner*, T.C. Memo. 1997-40, the U.S. Tax Court considered the issue of whether an executive director of a temple, later recognized as a Fellow in Synagogue Administration by the Synagogue Administrators Association, qualified as a

minister for housing allowance purposes. In addition to concluding that the taxpayer did not meet the service requirements (services that are ordinarily the duties of a minister of the gospel) of the regulations, the Court also noted that the taxpayer did not present any evidence that the temple considered him a religious leader. Accordingly, the Court concluded that the taxpayer failed to demonstrate he was a minister of the gospel for federal tax purposes.

In *Knight v. Commissioner*, 92 T.C. 199 (1989), the U.S. Tax Court in considering whether the taxpayer was a minister for purposes of self-employment tax, stated that it “must inquire in each case into not only whether the taxpayer is ‘ordained, commissioned, or licensed’ but also whether the taxpayer’s duties and functions were appropriate for a ‘duly ordained, commissioned, or licensed minister.’” The Court observed that “[t]he statute, of course, requires that he must be ‘ordained, commissioned, or licensed’ as a minimum”

Finally, in *Kirk v. Commissioner*, 425 F.2d 492, in affirming the Tax Court, the United States Court of Appeals, District of Columbia Circuit, held that a professional employee of a religious denomination who did not have the status as a minister could not exclude from his gross income the housing allowance that the employing denomination paid to both its ordained ministerial employees and its non-ordained employees. The Court quoted the underlying Tax Court opinion, which stated “Granting that petitioner performed services that are ordinarily the duties of a minister of the gospel, another requirement of the regulations is that petitioner be a minister of the gospel. Specifically the regulations require him to be ‘a duly ordained, commissioned, or licensed minister of a church or a member of a religious order.’ ... We do not think he is ‘commissioned.’ No congregation or other body of believers was committed to his charge. ... Petitioner here is merely a non-ordained church employee. ... The exclusion is granted by legislative grace to ministers of the gospel alone. All persons who are not ministers are denied this grace”

The questions of whether an individual has both the status of a minister and performs services that are ordinarily the duties of a minister are difficult and intensely factual questions. As a result, this type of inquiry would not typically be an appropriate candidate for the private letter ruling process. For example, whether the services a minister performs are the ministration of sacerdotal functions or the conduct of religious worship depends on the tenets and practices of the particular church or church denomination and is an extremely fact-intensive inquiry. However, just because we decide not to make a determination on a taxpayer’s request does not mean that we necessarily take an adverse view of the transaction.

Should _____ wish to request a letter ruling pre-submission conference on this issue to discuss a ruling on _____ status as a minister of the gospel for federal tax purposes, in order to make the conference as productive as possible, _____ should provide evidence regarding _____ status as a minister (for example, clear evidence or statements from the employing _____ that it considers _____ one of its religious leaders and from _____ denominational authorities that _____ is considered a member of the clergy). _____ should also provide clear evidence from _____ that _____ performs services that are ordinarily the duties of a minister of the gospel (for example, the ministration of sacerdotal functions, the conduct of religious worship—both of which

depend on the tenets and practices of the particular church or church denomination—and the control, conduct, and maintenance of religious organizations under the authority of a church or church denomination).

might also consider the possibility of asking the employing to request the ruling regarding status and whether the housing allowance is payment for services that are ordinarily services of a minister of the gospel. In the 1998 ruling you mentioned, the individual minister did not request the ruling; the church did. This factor may have helped to establish clearly the ministerial status of the deacons. That letter ruling held that three ordained deacons of a church qualified for the parsonage allowance. The church submitted the ruling request regarding three ordained members of its clergy (ordained deacons serving as the Minister of Education, Minister of Music, and Minister of Stewardship). The church's National Conference had voted to establish the order of ordained deacons as clergy members in full connection. While the experience in that situation affirmed the inherent difficulty in attempting rulings in this area, we nonetheless, in large part because of that, have offered and continue to offer a pre-submission conference to in order to review further whether it is feasible to undertake the ruling seeks.

It may be more efficient to work directly with the organization that establishes an individual as its religious leader and decides which ministerial services the individual will perform, rather than attempting to determine these facts through an individual. This approach may also help address the related tax issues that the employing itself would face. For example, determining whether the employing church properly designated the housing allowance (another requirement that must be met to exclude a housing allowance from gross income), and making sure the organization understands that wages paid to employee ministers are exempt from income tax withholding and taxes under the Federal Insurance Contributions Act (unlike most employees, ministers must pay both halves of the Social Security and Medicare taxes under the Self-Employment Contributions Act).

Again, my office is available if would like to participate in a letter ruling, pre-submission conference. I ask that remain mindful of the possibility that ultimately, we may not be able to issue a ruling in this area. However, to help avoid that possibility, as mentioned above, should provide evidence that considers, as an, one of its religious leaders, that employing considers the services performs for it as services as a minister of the gospel, and evidence from denominational authorities that is considered a member of the clergy.

I look forward to meeting with regarding this issue. If you have further questions, please call me at, or (ID#) of my staff at .

Sincerely,

Nancy J. Marks
Associate Chief Counsel/Division Counsel
(Tax Exempt & Government Entities)