Internal Revenue Service

Department of the Treasury

Washington, DC 20224

DEC 10 1998

Person to Contact: 199910055

Telephone Number:

Index No: 0107.00-00

Refer Reply to:
CC:EBEO:2 PLR 115424-97
Date:
DEC 10 1998

Key:

Church =

National Conference =

Regional Conference =

State Conference =

Governing Document =

Board =

X =

C =

D =

E =

City =

Date G =

Date H =

This is in response to your August 13, 1997, request for a private letter ruling submitted on behalf of X. Additional information was submitted on November 6, 1997, March 31, 1998, and August 3, 1998. A conference was held on February 24, 1998.

Facts

The Church is a well established worldwide Christian denomination that is organized pursuant to the tenets, social principles, constitutional provisions and legislative enactments contained in its Governing Document. The Governing Document is the fundamental book outlining the law, doctrine, administration and organization, work and procedures of the Church. The Church operates via a connectional structure maintained through a chain of conferences. The highest level of authority is the National Conference, which meets quadrennially to discuss issues of concern to the Church. The National Conference is comprised of one-half lay persons and one-half members of the clergy. Generally, each National Conference amends the Governing Document, and those amendments are reflected in the quadrennial revision of the Governing Document. Although subject to certain restrictions, the National Conference has the full authority, among other things, to define and fix the powers and duties of the members of the ordained clergy of the Church, and the Governing Document includes the rules applicable to ordained members of the clergy.

The basic organizational bodies of the Church are the Regional Conferences. Each Regional Conference within the United States includes the local churches of the Church within specific geographic boundaries. The membership in each Regional Conference includes clergy, lay persons and diaconal ministers. Clergy members in the Regional Conferences include ordained deacons and ordained elders. Only clergy members in full connection are allowed to vote on matters relating to the ordination, character and conference relations of the members of the clergy.

At its Date G gathering, the National Conference voted to establish the order of ordained deacons and the Governing Document was amended accordingly. Proposals to establish an order of ordained deacons had been made to the National Conference at the three preceding quadrennial gatherings. Thus, the decision to establish an order of deacons was made after the Church spent more than twenty years studying its ministry. Hence, after Date G an individual may be ordained as either a deacon or an elder. As permitted by the Governing Document, both elders and deacons are ordained as clergy members in full connection. Prior to establishment of the order of ordained deacon, elders were the only ordained members of the clergy.

The Church defines ordination as the act of conferring ministerial orders. In accordance with Church traditions, an ordained minister is a baptized person who is called by God, authorized by the Church and ordained by a bishop to a lifetime ministry. To qualify for ordination as either a deacon or an elder, an individual must meet the requirements set by the Church that are specified in the Governing Document. In addition, to be ordained, the individual must be recommended by the Regional Conference and receive the affirmative vote of the ministerial members of the Regional Conference. Through ordination the ordained individual is given the approval of the denomination to serve as an ordained minister and the authority to carry out those acts reserved to members of the clergy. Thus, following ordination, the ordained elder or deacon has the authority to exercise the responsibilities and duties of an ordained minister.

According to the Governing Document, an ordained deacon is permitted to give leadership in teaching and proclaiming the gospel, forming and nurturing disciples, performing marriages and funerals, and assisting the elder in administering the sacraments. An ordained deacon has full right of voice and vote in the Regional Conference where membership is held, may serve or hold office as a member of the clergy on the boards, commissions or committees of the Regional Conference, may be elected as a clergy delegate to the National Conference, must attend all sessions of the Regional Conference, and with the elder is responsible for all matters of ordination, character and conference relations with members of the clergy. An ordained deacon is accountable to his or her Regional Conference and the bishop for the fulfillment of his or her call. An ordained elder is appointed to a position by a bishop. However, unlike an elder, an ordained deacon does not intinerate, nor does the Church guarantee an ordained deacon a position, salary, or place of employment. Ordained deacons are permitted to participate in the Church retirement plan for members of the clergy.

When it established the order of ordained deacons, the National Conference amended the Governing Document to include transitional rules that would allow certain "diaconal ministers" to become ordained deacons. A diaconal minister is a lay person who was consecrated by a bishop, but who the Church does not treat or consider as a member of the clergy. The Church expects that some, but not all of its diaconal minsters will become ordained deacons. The transitional rules are available for a limited period and provide that a diaconal minister in good standing with his or her Regional Conference who has completed a minimum of three years in an approved service appointment may be ordained as a deacon provided he or she meets the following requirements:

a. Apply in writing to the Regional Conference for transfer of credentials to ordained deacon in full connection;

b. Complete the formation and education program sponsored by the Board;

c. Demonstrate an understanding of the call to the order of deacon and a ministry that fulfills and exemplifies the definition and description of deacon found in the Governing Document;

d. Satisfy specific educational requirements; and

e. Receive a two-thirds positive vote of the clergy session of the Regional Conference.

X, a local Church, founded in 1840, is located in City and is in the State Conference. X has more than 1,000 members, and employs more than fifty employees, including three ordained deacons, C, D, and E. C, D, and E were ordained pursuant to the transitional rules. X requested rulings that C, D, and E are ministers of the gospel and that the duties they perform are ordinarily the duties of a minister of the gospel under section 107 of the Internal Revenue Code (the Code). X also requested rulings that C, D, and E are ministers performing services in the exercise of their ministry for purposes of sections 1402(c)(4) and 3121(b)(8)(A).[1]

X has represented the following facts concerning C, D, and E and the duties they perform for X :

As ordained deacons, C, D, and E are expected to comply with the applicable provisions of the Governing Document. C is the Minister of Education; D is the Minister of Music; and E is the Minister of Stewardship. As integral members of X's pastoral team, C, D, and E meet with the elder to plan the worship services, assist with the sacraments, and officiate at weddings and funerals. Each is required to preach at Sunday worship service.

C's primary duties relate to the Christian education program. C plans and supervises youth, adult, and family activities, including Sunday education classes, Bible study, and various educational programs sponsored by X. C selects the curriculum, schedules activities, and when needed, coordinates lay volunteers. C also assists the X school to develop appropriate educational opportunities. D, the Minister of Music, coordinates all choir and music activities. E performs financial and managerial functions. His primary function is to encourage members of the congregation to give their time, talent and money to X and the community. When not leading worship services, C, D, and E participate with the pastor in the weekly worship service. They

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[1]In its initial submission X requested that the ruling apply to any ordained deacon it employed. We advised X that we would not issue a ruling that its ordained deacons were ministers without examining the facts relating to each individual minister.

also perform various other duties at X, including confirmation preparation and membership reception.

X's August 3, 1998, submission specifies how each met the transitional requirements needed to be ordained as a deacon. Each timely applied to the State Conference Board to transfer his or her credentials to ordained deacon. Each was in good standing as a diaconal minister and had completed at least three years in a service appointment approved by the bishop since consecration as a diaconal minister. Each completed the continuing formation and education program sponsored by the Board and satisfied the applicable educational requirements. C and D have bachelors degrees and have completed graduate theological courses as required by the State Conference. E has a masters degree in theology studies. Each demonstrated an understanding of the call to the order of deacon and received the full support of the State Conference Board of Ordained Clergy and was passed on to the State Conference for a final vote of confirmation. Each received the required two-thirds or greater positive vote of the clergy session of State Conference. C, D, and E and were ordained as deacons on Date H.

Applicable Law

Section 61(a) of the Code provides that, except as otherwise provided, gross income means all income from whatever source derived, including compensation for services including fees, commissions, fringe benefits, and similar items.

Section 107 of the Code provides that in the case of a minister of the gospel, gross income does not include the rental value of a home furnished to the minister as a part of the minister's compensation or the rental allowance paid to the minister as part of the minister's compensation, to the extent used by the minister to rent or provide a home.

Sections 1402(c)(4) and 3121(b)(8)(A) of the Code, which provide definitions for purposes of the Self-Employment Contributions Act taxes and the Federal Insurance Contributions Act (FICA) tax respectively, refer to services performed by a "duly ordained, commissioned, or licensed minister" of a church in the exercise of his ministry.

Section 1.107-1(a) of the Income Tax Regulations provides that in order to qualify for the exclusion provided by section 107, the home or rental allowance must be provided as remuneration for services which are ordinarily the duties of a minister of the gospel. In general, the rules provided in regulation section 1.1402(c)-5 apply to that determination. Regulation section 1.107-1(a) also provides that the performance of sacerdotal functions, the conduct of religious worship, the administration and maintenance of religious organizations and their integral agencies, and the

performance of teaching and administrative functions at theological seminaries will be considered the duties of a minister for purposes of section 107.

Section 1.1402(c)-5(a)(2) of the regulations provides that a "duly ordained, commissioned, or licensed minister" of a church is engaged in carrying on a trade or business with respect to service performed by him in the exercise of his ministry or in the exercise of duties required by a religious order unless an exemption under section 1402(e) of the Code is effective. Section 1.1402(c)-5(b)(2) provides that service performed by a minister in the exercise of his ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations) under the authority of a religious body constituting a church or church denomination. Section 1.1402(c)-5(b)(2)(i) provides that whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting the minster's church or church denomination. Section 31.3121(b)(8)-1 has a similar provision.

If a church or church denomination ordains some ministers of the gospel and licenses or commissions others, the licensed or commissioned minister must perform substantially all the religious functions within the scope of the tenets and practices of his religious denomination to be treated as a "minister of the gospel" under section 107 of the Code. Rev. Rul. 78-301, 1978-2 C.B. 103. The Service ruled in Rev. Rul. 59-270, 1959 -2 C.B. 44, that neither a minister of music nor a minister of education was entitled to an exclusion under section 107 when neither one was an ordained minister of the gospel, although both were performing services relating to the office and functions of a minister of the gospel. The facts of the ruling specify that neither minster was licensed, ordained or commissioned.

In Wingo v. Commissioner, 89 T.C. 922 (1989), the Tax Court considered whether the taxpayer, a probationary member of the North Arkansas Annual Conference of The United Methodist Church (the Conference), who was both an ordained deacon and a licensed local pastor, was performing services as a duly ordained, commissioned or licensed minister for purposes of the self-employment tax exemption available under section1402(e) of the Code. Taxpayer administered the Sacraments, conducted worship and performed services in the control, conduct and maintenance of his local church and Conference. The court held that the taxpayer was a duly ordained, commissioned, or licensed minister within the meaning of section 1402 when he assumed the duties and functions of a minister in 1980. In analyzing whether the taxpayer was a duly ordained, commissioned, or licensed minister, the court examined whether taxpayer performed the duties and functions of a minister within the three types of ministerial services specified in section 1.1402(c)-5(b)(2) of the

regulations, whether the taxpayer was ordained, commissioned, or licensed, and whether his church considered him to be a religious leader.

The court held that the taxpayer was a minister because he satisfied all the elements of section 1.1402(c)-5(b)(2) of the regulations. As a local pastor and an ordained deacon he administered the sacraments and conducted religious worship. The court also found that he satisfied the third prong (control, conduct, and maintenance of the church or religious organizations within the church) because he was in charge of all the organizational concerns of his own congregation, including administering the provisions of the church discipline, supervising the working program of the local church, maintaining church records and meeting local financial obligations. The court noted that a church's designation of an individual as a minister standing alone, is insufficient to determine whether the individual is a minister for self-employment tax purposes; however, it is an additional factor to consider. The court concluded that when a person performs all the three types of services set forth in the regulations and is recognized as a minister or religious leader by his denomination that person is a minister for purposes of section 1402(c) of the Code. Thus, taxpayer's status as a probationary member of the Conference did not prevent him from being a minister for purposes of section 1402(c).

In Haimowitz v. Commissioner, T.C.M. 1997-40, the Tax Court concluded that the taxpayer, a synagogue administrator, was not a minister of the gospel for purposes of section 107 of the Code. He had been employed by a temple for 30 years and was recognized as a Fellow in Synagogue Administration. He performed various services for the temple, including assisting students with Bar and Bat Mitzvah preparation, serving as marriage ceremony director, and conducting services for mourners. On his income tax return he specified that he was a religious functionary and asserted that as a religious functionary he was a minister of the gospel within the meaning of section 107. Here the Tax Court concluded that taxpayer did not meet the requirements of regulation section 1.1402(c)-5(b)(2). Specifically, the court found that the duties he performed, although related to the Jewish religion, were organizational in nature and did not require performance from one with ministerial credentials. The court then noted the religious rites and ceremonies he did not perform. He never fulfilled the role of rabbi or cantor, and the services he did perform were secular in nature. For example, he never officiated at a wedding or a funeral, and he merely assisted the rabbi at religious services. Thus, the court concluded he did not perform regularly those duties that the ministers of the Jewish faith customarily perform. In addition, the court found taxpayer's recognition as a Fellow in Synagogue Administration was irrelevant, as that designation is not a recognized religious official of the Jewish religion. The court also noted that taxpayer did not present any evidence that the temple considered him to be a religious leader. Accordingly, the court concluded that taxpayer failed to demonstrate that he was a minister of the gospel.

Discussion

Applying the test established in Wingo, we conclude that C, D, and E are ministers of the gospel performing services in the exercise of their ministries within the meaning of section 1.1402(c)-5(b)(2) of the regulations. As ordained members of the clergy in the Church, C, D, and E conduct worship and assist with the sacraments. In addition, as ordained members of the clergy in full connection they perform services in the control, conduct and maintenance of the Church. Further, X and the Church consider C, D, and E to be religious leaders who can perform substantially all of the religious functions within the scope of the Church's tenets and practices. We find that E is distinguishable from the synagogue administrator in Haimowitz, as E is an ordained member of the Clergy in full connection. E officiates at weddings and funerals and will regularly perform the duties that members of the clergy of the Church customarily perform. Accordingly, C, D, and E are performing services as "ministers of the gospel" within the meaning of section 107 of the Code. Thus, C, D, and E are eligible to have a portion of their salary designated as a parsonage allowance. Any parsonage allowance will be excluded from gross income, provided the allowance is designated and paid in accordance with section 107. We further conclude that the services C, D, and E perform are in the exercise of their ministry within the meaning of section 3121(b)(8) of the Code.

This ruling is not intended to imply or suggest that the mere designation of an individual as a minister is sufficient to conclude that the individual is a minister of the gospel for purposes of sections 107, 1402, 3121, or 3401 of the Code. Nor does this ruling suggest that the Service has departed from its position in Rev. Rul. 59-270. This ruling applies only to C, D, and E with respect to the services they perform for X. No opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Jerry E. Holmes

JERRY E. HOLMES
Chief, Branch 2
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosure:

Copy for 6110 purposes.