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Impact of Clergy Rental Exclusion Holding Could Be Big, Practitioners Say.

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In a November 22 holding on a suit brought by the Freedom From Religion Foundation Inc. (FFRF) against the IRS, the U.S. District Court for the Western District of Wisconsin said that section 107(2), which provides for the exclusion, violates the establishment clause of the First Amendment because it benefits only religious people even though the benefit is not needed to ease a special burden on the exercise of religion. Although the exclusion benefits many ministers who may feel its loss if it is taken away, it violates the First Amendment principle that a person's religion should not affect one's legal rights, duties, or benefits, Judge Barbara B. Crabb wrote.

The FFRF rejoiced at the news. "This decision agrees with us that Congress may not reward ministers for fighting a 'godless and anti-religious' movement by letting them pay less income tax. The rest of us should not pay more because clergy pay less," FFRF co-presidents Annie Laurie Gaylor and Dan Barker said in a statement .

FFRF's attorney, Richard L. Bolton, said the holding is not hostile to religion and should not be considered controversial: "The Court has simply recognized the reality that a tax free housing allowance available only to ministers is a significant benefit from the government unconstitutionally provided on the basis of religion."

Michael E. Batts of Batts Morrison Wales & Lee, who has served as chair of the Commission on Accountability and Policy for Religious Organizations, told Tax Analysts the decision, if upheld, would have a massive impact on houses of worship and clergy across the United States. It would affect the ability of churches and other religious organizations to compensate clergy, he said, adding that churches might have to devote more of their budgets to clergy compensation at the expense of other areas.

In a statement , Russell D. Moore, president of the Ethics and Religious Liberty Commission of the Southern Baptist Convention, said the holding ultimately could harm clergy serving small congregations. "The clergy housing allowance isn't a government establishment of religion, but just the reverse," he said. "The allowance is neutral to all religions. Without it, clergy in small congregations of all sorts would be penalized and harmed."

Crabb stayed enforcement of her decision pending an appeal.

The court's decision did not implicate the section 107(1) exclusion for clergy living in parsonages

provided by churches.

by Fred Stokeld

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