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The Constitutionality of the Cash Parsonage Allowance.

Alan L. Feld rebuts Edward A. Zelinsky's claim that parsonage allowances are excludable, contending that taxing the housing allowance is "no more intrusive than taxing a minister's salary."

To the Editor:

Professor Zelinsky has made a valiant effort to defend the constitutionality of section 107(2), the provision that excludes from gross income cash housing allowances of a minister of the gospel. (Prior coverage: Tax Notes, Jan. 27, 2014, p. 413 ; see also Tax Notes, Feb. 3, 2014, p. 569 .) A U.S. district court granted summary judgment to plaintiffs attacking the provision on First Amendment and Equal Protection grounds. Zelinsky criticizes the decision for failing to give due weight to the secular purposes of the exemption. Unfortunately, Zelinsky's argument is ultimately unpersuasive.

To find a sufficient secular purpose for the exclusion so as to satisfy the prevailing constitutional test of *Lemon v. Kurtzman* (403 U.S. 602), Zelinsky relies on *Walz v. Tax Commission* (397 U.S. 664), a case he says the district court inappropriately discounted. *Walz* involved a challenge to the property tax exemption granted by New York state to churches, among other institutions. The majority opinion in *Walz* upheld the exemption, speaking of it as a proper way to diminish entanglement between church and state. Subjecting church property to annual property tax assessment would involve more entanglement than exemption. Similarly, Zelinsky argues, the exclusion of ministers' housing allowances from gross income minimizes entanglement.

Here is where the analogy to *Walz* falters. This proposition plausibly could apply to section 107(1), which exempts from ministers' gross income the rental value of a home furnished in kind. The intrusion wrought in the process of valuing the in-kind benefit to the minister resembles that of assessing the value of a church building. But the cash allowances exempted under section 107(2) present no such difficulty. Taxing the housing allowance cash as income is no more intrusive than taxing the balance of the minister's salary. In practice, the church board decides to pay the minister a sum, say \$100,000, and adds a clause specifying that some part, say 30 percent, represents a housing allowance. The government's entanglement with the religious function is minimal.

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