

## Ministerial Housing Allowance Ruled Constitutional

On March 15, 2019, in a widely anticipated opinion, the U.S. Seventh Circuit Court of Appeals unanimously reversed a lower federal district court, which had ruled in late 2017 against the longstanding housing allowance for ministers. In reversing the lower court decision, the appeals court likened the ministers' housing allowance to other similar benefits in the tax code for work-related housing, finding the provision permissible under the First Amendment and well-established legal precedent.

Another way of saying it...the Seventh Circuit found that:

- [Code Sec. 107\(2\)](#) of the Internal Revenue Code has a secular legislative purpose;
- its principal effect is neither to endorse nor to inhibit religion; and
- it does not cause excessive government entanglement.

The **Freedom from Religion Foundation (FFRF)** challenged the constitutionality of [Code Sec. 107\(2\)](#) arguing that it confers a government benefit on religion. The FFRF claimed that:

- [Code Sec. 107\(2\)](#) applies to a broader category of persons than other categorical housing exclusions in the tax code; and
- [Code Sec. 107\(2\)](#) does not avoid entanglement because the IRS must still administer a test to determine whether a taxpayer qualifies as a minister.

The **Treasury Department** countered their argument noting that Congress passed [Code Sec. 107](#) to:

- put clergy on equal footing with secular employees receiving the same benefits;
- eliminate discrimination against clergy; and
- avoid excessive entanglement with religion.

### Historical Significance

The Seventh Circuit found no evidence that provisions like [Code Sec. 107\(2\)](#) were historically viewed as an establishment of religion. The court noted that for over two centuries, the states have implemented church property tax exemptions in various forms. When challenged on establishment grounds, such tax exemptions typically have been upheld.

Congress has enacted federal tax exemptions for religious organizations as far back as 1802. Within a few years of income becoming taxable, Congress moved to exclude parsonages from income, and a few decades later excluded cash housing allowances as well. Congress was continuing its "historical practice" of exempting certain church resources from taxation, according to the court.

The Seventh Circuit additionally noted that the Supreme Court has held a tax exemption not to be a subsidy for religion.

The Freedom from Religion Foundation (FFRF), the group which brought this challenge to the housing allowance, has yet to indicate if they intend to appeal the decision. But most experts expect they will.

[Click here to read a more detailed breakdown of the court's opinion.](#)

<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D03-15/C:18-1280:J:Brennan:aut:T:fnOp:N:2309033:S:0>

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