

Appeal Process Begins in Minister's Housing Allowance Case

A Wisconsin federal district court ruled in October 2017 that the housing exclusion for minister-provided housing is unconstitutional, a ruling that could ultimately strike down the allowance nationwide. Now an appeal to the Seventh Circuit Court of Appeals has been filed by a group of Chicago-area pastors (filed in early February 2018) in an attempt to overturn the ruling.

While the appeal is not expected to reach the courtroom until later this year, The Becket Fund for Religious Liberty, representing pastors on the South Side of Chicago and other religious leaders, filed its opening brief with the Court on April 19. Several organizations, including ECFA, The Lutheran Church – Missouri Synod, the National Association of Evangelicals, the Union of Orthodox Jewish Congregations of America, Council of Churches of City of New York, Queens Federation of Churches, and the Christian Legal Society, filed an Amicus Briefⁱ with the court detailing the longstanding history of the housing allowance and the devastating financial consequences that would be felt by ministers and churches if this provision is found unconstitutional.

The housing exclusion was established by Congress in 1954 to protect ministers, as well as business leaders, teachers, military personnel, and other workers who need to live in a certain community to perform their jobs, from tax treatment that would put them at a disadvantage and make it difficult if not impossible for them to serve their community.

For now, ministers and their employing churches can continue to make use of the housing allowance exclusion. However, if the lower court's decision is not overturned, churches in the Seventh District (Illinois, Indiana, and Wisconsin) would be immediately affected, and since the IRS federal tax code applies to all states, the decision could prompt a review by the U.S. Supreme Court.

We will continue to monitor the case and provide updates as the case progresses.

ⁱ An amicus brief is a document that is filed in a court by someone who is not directly related to the case under consideration. The most classic example is a document filed by an advocacy group, such as the American Civil Liberties Union. The additional information found in such a document can be useful for the judge evaluating the case, and it becomes part of the official case record. Many nations allow people or entities to file such documents with their courts.

DISCLAIMER

This material is presented with the understanding that the author is providing basic information only and assumes no liability whatsoever in connection with its use. Tax laws are constantly changing, are subject to differing interpretations, and the facts and circumstances in any particular situation may not be the same as those presented here. Therefore, we urge you to do additional research and make sure that you are fully informed and knowledgeable before using the information contained herein.

To ensure compliance with Treasury Regulations (31 CFR Part 10, §10.35), we are required to inform you that any tax advice contained in any correspondence or other communication from us is not intended or written by us to be used, and cannot be used by you or anyone else, for the purpose of avoiding penalties imposed by the Internal Revenue Code.