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SUBJECT Clergy Residence Deduction

SECTION 8(1)(c)

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PRINCIPAL ISSUES: 1) Whether two members of the clergy who are spouses and own and reside in separate residences may each claim the clergy residence deduction in respect of his or her residence.

POSITION: 1) Question of fact.

REASONS: 1) Assuming that the status and function tests have been satisfied by both spouses, a clergy residence deduction may be claimed in respect of each residence in situations where it can be demonstrated that each spouse ordinarily resided in a separate residence as his or her principal place of residence.

DATE June 4, 2013

TO Taxpayer Services Directorate FROM Income Tax Rulings

www.globalphilanthropy.ca

Taxpayer Services and Debt Directorate

À Management Branch DE Business and Employment Division

Tom Baltkois

Attention: Kurt Stephens FILE 2012-045596

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SUBJECT: Clergy Residence Deduction

OBJET:

We are writing in response to a fax dated July 13, 2012, in which we were asked to comment on whether two members of the clergy, who are spouses and own and reside in separate residences, may each claim the clergy residence deduction in respect of his or her respective residence.

Our Comments

Paragraph 8(1)(c) of the Income Tax Act ("the Act") provides a deduction in certain circumstances, to clergy, ministers, and members of religious orders in respect of their residence if they are engaged in qualifying employment.

Where both the status and function tests have been met, the amount of the deduction provided under paragraph 8(1)(c) of the Act depends upon whether the living accommodation occupied by a qualifying individual was supplied by virtue of his or her employment, was rented by the individual, or was owned by the individual (or by his or her spouse or common-law partner). In situations where an accommodation is owned, the clergy residence deduction is made under subparagraph 8(1)(c)(iv) of the Act, and is based on the fair rental value, including utilities, of such a residence (i.e. an individual's principal place of residence) or living accommodation (unfurnished).

The wording of subparagraph 8(1)(c)(iv) of the Act also ensures that the residence for which a deduction is being sought is actually owned by the individual or his or her spouse or common-law partner. That is, a deduction would not be available in situations where an individual ordinarily occupied a residence that was owned by some other person.

An individual's principal place of residence referenced in subparagraph 8(1)(c)(iv) of the Act should not be confused with an individual's principal residence, as defined in section 54 of the Act. Generally speaking, an individual may have one principal place of residence and one principal residence, notwithstanding the fact that he or she may own more than one property. However, unlike a principal residence designation, where an individual may designate a particular qualifying property as his or her principal residence, the determination as to which particular property is an individual's principal place of residence is always a question of fact.

The phrase "principal place of residence" is not defined in the Act, however, it appears in both subsection 6(6) and paragraph 81(1)(h) of the Act. With regard to the former, paragraph 7 of Interpretation Bulletin IT-91R4, Employment at Special Work Sites or Remote Work Locations, discusses the concept of a "principal place of residence" and indicates that it is "the place where the employee maintains a self-contained domestic establishment. The term "self-contained domestic establishment" is defined in subsection 248(1) of the Act as a dwelling-house, apartment or other similar place of residence where a person generally sleeps and eats…"

Income Tax Technical News No. 31R2 ("ITTN 31R2") also provides some guidance as to the intended meaning of principal place of residence, in the context of paragraph 81(1)(h) of the Act, and states that, "a "principal place of residence" is the place where the individual regularly, normally or customarily lives. In our view, the place where the individual normally sleeps is a significant factor in making this determination. Other significant factors include the location of the individual's belongings, where the individual receives his or her mail, and where the individual's immediate family, including the individual's spouse or common-law partner and children, reside."

Once a determination is made as to which particular property is an individual's principal place of residence, subparagraph 8(1)(c)(iv) of the Act further requires that the individual must have ordinarily occupied his or her principal place of residence during the year. The phrase "ordinarily occupied", while not defined in the Act, appears in subparagraph 62(3)(g)(i) of the Act, which concerns moving expenses.

In Cusson c. R., 2006 CarswellNat 4409, the Tax Court of Canada considered whether a taxpayer was entitled to a deduction in respect of moving expenses and noted that, "the Act requires that the new residence ordinarily occupied by the taxpayer be in Canada…This Court has considered the question whether a taxpayer has ordinarily resided at a new residence. In Cavalier v. R., [2001] T.C.J. No. 719 (T.C.C. [Informal Procedure]), Bowie J. analyzed the case law concerning this expression and found that the moving of household effects and the intention to remain permanently or for a particular length of time are irrelevant in concluding whether a taxpayer ordinarily resided at his new residence. In Calvano v. R. (2003), 2004 CCI 227 (T.C.C. [General Procedure]), Miller J. followed the same reasoning and added that the concept of ordinarily resident had more to do with the settled ordinary routine of life than the permanence of the arrangement."

Based upon the above, it appears that the courts have considered the phrases “ordinarily occupied” and “ordinarily resided” to be synonymous and interchangeable. The phrase “ordinarily resided” was judicially interpreted by the Supreme Court of Canada in Thomson v. M.N.R., 2 DTC 812 (SCC). In that case, Estey, J. concluded that, “…one is ordinarily resident in the place where, in the settled routine of his life he regularly, normally or customarily lives”.

In summary, for purposes of paragraph 8(1)(c) of the Act, a property will be considered to have been ordinarily occupied during the year as the taxpayer’s principal place of residence where it is established that it was the place where the individual regularly lived, slept, received mail, etc., and in some cases, where the individual’s immediate family also resided.

Accordingly, in a situation where each spouse satisfies the status and function tests and the facts demonstrate that each separate residence was ordinarily occupied by only one spouse as his or her principal place of residence, it is our view that each spouse may claim the full clergy residence deduction.

We trust these comments will be of assistance to you.

Yours truly,

Nerill Thomas-Wilkinson, CPA, CA

Manager

for Director

Business and Employment Division

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