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PRINCIPAL ISSUES: Whether a school chaplain employed by a Catholic school board is eligible to claim the clergy residence deduction?

POSITION: See response.

REASONS: See response.

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2015-059863

T. Baltkois

October 6, 2015

Dear XXXXXXXXXX:

Re: Clergy residence deduction

We are writing in response to your letter dated January 20, 2015, and your submissions dated May 28, 2015 and July 6, 2015, which concern whether a school chaplain employed by a Catholic school board may claim the clergy residence deduction provided by paragraph 8(1)(c) of the Income Tax Act (Act). It is our understanding that the individual was appointed to the position of school chaplain by the Auxiliary Bishop of the Roman Catholic Church.

Our Comments

This technical interpretation provides general comments about the provisions of the Act and related legislation (where referenced). It does not confirm the income tax treatment of a particular situation involving a specific taxpayer but is intended to assist you in making that determination. The income tax treatment of particular transactions proposed by a specific taxpayer will only be confirmed by this Directorate in the context of an advance income tax

ruling request submitted in the manner set out in Information Circular IC 70-6R6, Advance Income Tax Rulings and Technical Interpretations.

Generally, to be eligible for the clergy residence deduction provided under paragraph 8(1)(c) of the Act, an individual must be a member of the clergy, a member of a religious order, or a regular minister of a religious denomination (the status test). When one of these conditions is met, the individual must also be in charge of, or ministering to, a diocese, parish or congregation, or engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination (the function test).

In order to qualify for the clergy residence deduction, a person must satisfy both the status and the function tests.

The information you provided indicates that the individual holding the position of school chaplain is neither a member of the clergy, nor a member of a religious order. Thus, the individual would only satisfy the status test if he or she is a regular minister of the Roman Catholic Church.

According to paragraph 5 of Interpretation Bulletin IT-141R (Consolidated), Clergy Residence Deduction, a “regular minister” is a person who:

- * is authorized or empowered to perform spiritual duties, conduct religious services, administer sacraments and carry out similar religious functions. Religious functions may include participation in the conduct of religious services, the administration of some of the rituals, ordinances or sacraments, and pastoral responsibilities to specific segments of the religious organization;
- * is appointed or recognized by a body or person with the legitimate authority to appoint or ordain ministers on behalf of or within the religious denomination; and
- * is in a position or appointment of some permanence.

However, as noted in paragraph 3 of IT-141R, the determination as to whether a particular individual is a “regular minister” of a particular religious denomination generally depends on the structure and practices of the particular church or religious denomination.

As you are aware, there are a number of court cases (footnote 1) which have considered whether non-ordained members of the Roman Catholic Church are regular ministers of that religion, for purposes of paragraph 8(1)(c) of the Act. With the exception of the Noseworthy case, the courts have consistently held that such individuals would not satisfy the status test as a regular minister of the Roman Catholic Church.

In Noseworthy, the Tax Court of Canada (TCC) considered whether an individual appointed as Interfaith Chaplain of the Nova Institution for Women by the Roman Catholic Archdiocese of Halifax, was a regular minister of the Roman Catholic Church. In that case, the individual (among other things) conducted regular Sunday and holiday worship services, memorial and special prayer services, and was called upon to offer sacramental and pastoral care to the inmates. After considering various judicial interpretations of the phrase “regular minister”

(footnote 2), the TCC concluded that an individual need not be ordained to be considered a regular minister of the Roman Catholic Church, and indicated that this would be the case even though ordination was practiced within that religious denomination.

However, in *Lefebvre*, the Federal Court of Appeal (FCA) determined that non-ordained pastoral agents of the Roman Catholic Church would not satisfy the status test as regular ministers of that religious denomination. While the *Noseworthy* case was considered in *Lefebvre*, the FCA concluded that *Noseworthy* was decided based on its unusual facts and thus, did not have precedential value. With regard to the status of non-ordained pastoral agents, the FCA clarified that:

The issue of status must be analyzed from the perspective of the Catholic Church, which alone determines the status it confers to its members. In canon law, the distinction between ordained ministers and lay faithful (among whom pastoral agents are recruited) remains as fundamental today as it has always been.

Moreover, only ordained ministers are conferred a status that can be said to be permanent (i.e., *ad vitam aut culpam*). Even though under canon law, the lay faithful are authorized to perform certain specific functions that are normally entrusted to ordained ministers, they are called upon to do this on a temporary basis when there is a scarcity of ordained ministers

In *Proulx*, the FCA similarly concluded that a non-ordained individual appointed to the position of pastoral and Christian values educational leader was not a regular minister of the Roman Catholic Church based on the *Lefebvre* decision, and stated:

We all agree that *Lefebvre* provides a full answer to the issue on appeal, namely whether Ms. *Proulx*, acting as a pastoral agent, is a regular minister of the Roman Catholic Church (Respondent's Factum, at paragraph 37). The answer is no.

Based on the above, it is our view that a non-ordained individual appointed to the position of school chaplain by the Roman Catholic Church would not satisfy the status test as a regular minister of that religious denomination. We, therefore, did not consider whether such an individual would satisfy the function test (i.e., ministering to a diocese, parish, or congregation).

We trust these comments will be of assistance to you.

Yours truly,

Nerill Thomas-Wilkinson, CPA, CA
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