

## **Government Files Latest Brief in Response to Clergy Housing Challenge**

The lawsuit by the Freedom From Religion Foundation (FFRF) challenging the housing exclusion currently afforded clergy under federal law proceeded this week, as the federal government filed a legal response brief in the Seventh Circuit Court of Appeals defending the constitutionality of the law, and arguing that FFRF lacks legal standing to bring the case.

Reciting the history behind the longstanding clergy housing provisions now found in Sec. 107 of the tax code, the government's brief summarizes the proceedings thus far in the case and goes on to explain why the U.S. Treasury Department and the IRS believe the Western District of Wisconsin reached the wrong conclusion in finding the clergy housing allowance exclusion unconstitutional.

### ***Key Arguments of the Government Position***

The government argues that the district court should have dismissed the case because FFRF and its leaders lack the "standing" required of plaintiffs to bring a challenge in federal court. FFRF claims the clergy housing allowance provision unlawfully discriminates against leaders of non-religious groups, however FFRF's atheist co-presidents have never actually tried to claim a housing allowance for themselves with the IRS. As a result, the government argues, it was premature for the court to rule that FFRF suffered any kind of personal injury sufficient to bring the lawsuit. Their argument goes on to say... "(the) plaintiffs here have not personally asked for the Sec.107(2) exclusion, nor are they litigating their own tax liabilities. Because they seek only to deprive others of the exclusion, they have suffered no actual personal injury at the hands of the Government."

Then, assuming for argument's sake that FFRF and its leaders do have standing, the brief goes on to explain why the clergy housing allowance exclusion is not unconstitutional as a permissible accommodation of religion. The government's position is that the history behind the law demonstrates it satisfies each part of the test used by courts to evaluate whether a law violates the Establishment Clause of the First Amendment. "...the Court...should uphold Sec. 107(2) as constitutional. Sec. 107(2) has a secular purpose and effect and avoids excessive church-state entanglement...In striking down the law, the District Court erred. It failed to come to grips with the reasons Congress enacted Sec. 107 in the first place. It also disregarded the fact that the housing exclusions provided to ministers are merely part of a larger Congressional design providing exclusions or deductions for certain employer-provided housing benefits for all taxpayers."

(Note: Until the appeals process concludes and the Seventh Circuit issues a ruling, the suit will have no effect on ministers who currently receive a housing allowance from their church or other employer).

Source: Freedom From Religion Foundation, Inc. v. Lew, No. 14-1152 (7th Cir.)

---

## 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.*