

JOHN W. & PATSY E. JOHNSON
819 Old Rock Ridge Road
Weaver, AL 36277-4533,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. INC. 97-347

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed income tax against John W. and Patsy E. Johnson ("Taxpayers") for 1993, 1994, and 1995. The Taxpayers paid the tax to stop interest from accruing, and then requested a refund. The Department denied the refund, and the Taxpayers appealed pursuant to Code of Ala. 1975, 40-2A-7(c)(5)a. A hearing was conducted on October 15, 1997. John W. Johnson (individually "Taxpayer") represented the Taxpayers. Assistant Counsel Antoinette Jones represented the Department.

The issue in this case is whether a portion of the Taxpayer's wages received during the subject years was exempt from Alabama income tax as a housing allowance paid to a minister. See, Code of Ala. 1975, 40-18-14(2)g.

The Taxpayer was employed as a minister at Wayside Baptist Church in Anniston, Alabama during the subject years. The Church paid the Taxpayer \$23,176.43 in 1993, \$23,335.56 in 1994, and \$19,883.56 in 1995. The Church failed to designate any part of the wages as a housing allowance.

The Taxpayer failed to report the wages on his Alabama returns for the

subject years. The Taxpayer testified that he believed the income was exempt because he was a minister.

The Department audited the Taxpayer, determined that the wages were not exempt, and accordingly assessed the tax in issue.

A housing allowance paid by a church to a minister as part of his or her compensation is exempt from Alabama income tax. Section 40-18-14(2)g. The above exemption is modeled after the similar federal exemption at 26 U.S.C.A. 107. In such cases, federal authority must control for Alabama purposes. State v. Morris, 227 So.2d 123 (1969).

IRC Reg. 1.107-1(b) provides that the housing exclusion is allowed only if the church pre-designates a portion of the minister's salary as a housing allowance. That requirement is recognized in the 1997 Minister's Tax Guide published by the Southern Baptist Convention, which the Taxpayer provided to the Administrative Law Division, and which reads in part as follows:

"The most important tax benefit available to ministers who own or rent their homes is the housing allowance exclusion. Federal tax law permits ministers who own or rent a home to exclude from gross income that portion of their compensation that is designated in advance as a housing allowance by their church, and that is actually spent on housing expenses. In addition, the housing allowance exclusion for ministers who own their home may not exceed the fair rental value of their home (furnished, including utilities). Under no circumstances can a church designate a housing allowance retroactively. Unfortunately, many churches fail to designate a portion of a minister's compensation as a housing allowance, and thereby deprive ministers of an important tax benefit."

The pre-designation requirement has also been sustained by the federal courts. See generally, Warnke v. U.S., 641 F.Supp. 1083 (1986); Ling v. U.S., 200 F.Supp. 282 (1961). See also, Department Reg. 810-3-14-.09(1)(b).

Because the Taxpayer's Church failed to pre-designate a portion of his wages as a housing allowance, none of the wages can be excluded from gross income pursuant to 40-18-14(2)g. The Department thus properly denied the refunds in issue.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, 40-2A-9(g).

Entered November 5, 1997.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Antoinette Jones, Esq.
John W. Johnson
Kim Herman (247-56-1589)