

DOROTHY FRADY  
293 JOHNSON DRIVE SW  
CULLMAN, AL 35055,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 05-1150

### **OPINION AND PRELIMINARY ORDER**

The Revenue Department assessed Dorothy Frady (“Taxpayer”) for 1999, 2000, and 2002 income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 26, 2006. Jim Sizemore represented the Taxpayer. Assistant Counsel Mark Griffin represented the Department.

The Taxpayer was employed during the subject years by the Seventh Street Baptist Church in Cullman, Alabama. The issue in this case is whether a housing allowance the Church paid to the Taxpayer was exempt from Alabama income tax pursuant to Code of Ala. 1975, §40-18-14(3)g. That section exempts from Alabama income tax the “rental value of a parsonage provided to a minister of the gospel to the extent excludable under 26 U.S.C. §107.”

The Taxpayer has worked at the Church since 1984. She served as the Church’s Minister of Adult Education during the years in issue. Her duties and functions in that capacity included organizing and participating in mission trips with various Church members. The trips were for the purpose of preaching the gospel. The Taxpayer administered the sacrament of holy communion on the mission trips.

The Taxpayer also conducted worship services in conjunction with a prison ministry, and assisted in conducting regular Sunday services at the Church. She also participated in funerals, and is currently head of or involved in eleven committees at the Church. She also submitted evidence that she is considered a leader by the Church and its members.

The Church paid the Taxpayer a housing allowance of between \$14,000 and \$16,000 in each of the subject years. The Taxpayer failed to report those amounts as income on her Alabama returns. The Department audited the Taxpayer and included the amounts as income. It also made other adjustments that are not contested by the Taxpayer.

The Department determined that the Taxpayer was not entitled to the exclusion provided at §40-18-14(3)g. because she is not an ordained minister, citing IRS Revenue Rulings from the 1950's and 1960's and a 1968 Tax Court case, *Lawrence v. CIR*, 50 T.C. 494 (1968). The Department attorney concedes, however, that more recent decisions do not require that a taxpayer must be an ordained minister for the housing exclusion to apply. Rather, a factor test should be used in determining if the exclusion applies. That test was explained by the U.S. Tax Court in *Knight v. CIR*, 92 T.C. 199 (1989), as follows:

Petitioner argues that though he was authorized to preach and minister spiritually to the Shiloh congregation, he was specifically prohibited by church law from administering the Lord's Supper, baptism, and marriage, and from moderating the church session and participating in church government. This circumstance was fatal to the taxpayer's entitlement to the benefit of section 107 in *Lawrence v. Commissioner, supra*. Under current case law, however, absence of ordination or incapacity to perform all sacerdotal functions is only one element in analyzing a taxpayer's ministerial status for purposes of sections 107 and 1402. Under *Wingo v. Commissioner, supra* at 934, five factors are analyzed. Those factors are whether the individual (1) administers sacraments, (2) conducts worship services, (3) performs services in the "control, conduct, and maintenances of a religious organization," (4) is

“ordained, commissioned, or licensed,” and (5) is considered to be a spiritual leader by his religious body. These factors are drawn from Section 1.1402(c)-5(b)(2), Income Tax Regs., and prior case law. Section 1.1402(c)-5(b)(2), Income Tax Regs., provides that services performed by a minister in the exercise of his ministry include: (1) The ministration of sacerdotal functions, (2) the conduct of religious worship, and (3) the control, conduct, and maintenance of religious organizations under the authority of a religious body constituting a church or church denomination.

In this case, two of the five *Wingo* factors used to determine ministerial status are not present. Petitioner contends, therefore, that pursuant to section 1.1402(c)-5(b)(2), Income Tax Regs., he is not in the trade or business of being a minister but rather is an employee of the CPC. Neither *Wingo* nor the regulations state or imply that all of the ecclesiastical functions mentioned must be performed by the petitioner in order for section 1402(c)(4) to apply to him. To the extent that the *Lawrence* holding implied a stricter test, *Wingo* specifically retreated from that holding as did the opinion in *Silverman v. Commissioner*, 57 T.C. 727, 732 (1972). The statute, of course, requires that he be “ordained, commissioned, or licensed” as a minimum, but otherwise we hold that the five factors set forth in *Wingo* are the elements of a facts and circumstances test. This is not an arithmetical test but a balancing test. Failure to meet one or more of these factors must be weighed by the court in each case.

*Knight v. CIR*, at 202-204.

As further explained in the Department’s excellent Brief at 7, while *Knight* involved the imposition of the self-employment tax at 26 U.S.C. §1402, the IRS has by regulation tied the interpretations of §1402 to the §107 housing allowance exclusion. See, 26 CFR §1.107-1(a).

The Taxpayer in this case satisfied at least four of the five factors in *Knight*. She administered sacraments, conducted worship services, had management responsibilities and served under the control of the Church, and was considered a spiritual leader by the Church and its members. The Taxpayer was not ordained or licensed as a minister, but as indicated in *Knight*, being an ordained minister is no longer required for the §107 exclusion

to apply.

Applying the five factor test in *Wingo*, it is clear that the housing allowances received by the Taxpayer in this case qualifies for the §40-18-14(3)g. exclusion. The Department is directed to remove the housing allowances from the Taxpayer's income, and thereafter recompute the Taxpayer's liabilities for the subject years. An appropriate Final Order will then be entered.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered February 23, 2006.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Mark Griffin, Esq.  
James M. Sizemore, Jr., Esq.  
Clisby Thomas