BARBARA DESHAZO c/o Ferrell Maughan, CPA 2804 Cahawba Trail Birmingham, AL 35243,	'	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	'	DOCKET NO. INC. 00-120
v.	'	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	'	

FINAL ORDER

The Revenue Department denied refunds of 1997 and 1998 income tax requested by Barbara Deshazo (ATaxpayer@). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, '40-2A-7(c)(5)a. A hearing was conducted on May 11, 2000. CPA Ferrell Maughan represented the Taxpayer. Assistant Counsel Mark Griffin represented the Department.

ISSUE

The issue in this case is whether a portion of the Taxpayer=s 1997 and 1998 income was exempt from Alabama income tax as a housing allowance paid to a minister. Code of Ala. 1975, '40-18-14(3)(g).

FACTS

The Taxpayer writes religious songs and performs her songs and other sacerdotal functions for churches and other religious organizations. She received royalties from her songs and also honorariums from the various churches and organizations during the subject years. She was licensed by at least one religious organization (Liberty Fellowship), but was not employed by or under the auspices of any church or other governing body.

The Taxpayer did not claim the housing allowance exemption allowed ministers at '40-18-14(3)(g) on her original 1997 and 1998 Alabama income tax returns. She later claimed the exemption and requested a refund on amended returns filed for both years. The amounts claimed had not been predesignated as a housing allowance by any church or other organization. The Department denied the refunds. The Taxpayer appealed.

ANALYSIS

Section 40-18-14(3)(g) exempts from income the rental value of a parsonage provided to a minister to the same extent allowed at 26 U.S.C. '107. Section 107 exempts from income (1) the rental value of a home furnished as part of a minister=s compensation, or (2) the rental allowance paid to a minister as part of his or her compensation. ARental allowance@ is defined by federal regulation as A. . . an amount paid to a minister to rent or otherwise provide a home if such amount is designated as rental allowance pursuant to official action taken . . . in advance of such payment by the employing church or other qualified organization.@ 26 C.F.R. '1.107-1(b).

The Taxpayer=s representative argues that the Taxpayer is entitled to the exclusion because she performs the same duties as a minister employed by a church. He further contends that because the Taxpayer was not under the auspices of any church or governing body during the subject years, she should be allowed to self-designate the amount attributable to a housing allowance.

The Department does not contest that the Taxpayer qualifies as a minister. It argues, however, that the exemption cannot be allowed because a housing allowance was

not designated in advance by an employing church or other qualified organization as required by 26 C.F.R. ' 1.107-1(b). I agree.

This issue was addressed in Warnke v. U.S., 641 F.Supp. 1083 (1986). Warnke was a self-employed evangelistic minister. The court denied Warnke the ' 107 exemption because an employing church or other qualified organization had not designated a part of his income as a housing allowance.

> The Court finds the denial of the allowance exclusion to the Warnkes in 1980 was proper in light of the regulatory requirements established to implement 26 U.S.C. ' 107(2). Regulation 1.107-1(b) clearly mandates that an Aemploying church@ or Aother qualified organization@ designate the portion of a qualifying person=s income the organization deems appropriate for the allowance exclusion, as limited by the fair rental value or the amount actually expended by the individual. Consequently, the plaintiffs= argument that a prior designation was properly achieved when they committed themselves to various long-range housing expenses is simply untenable. The designation must be made by a third party under the regulatory scheme. In Libman, supra, the court merely held that the designation by a third party need not always be in writing. The court=s holding does not purport to allow individuals the privilege of self-designation. For the above reasons, the Court holds the Warnkes did not meet the statutory or regulatory requirements of 26 U.S.C. ' 107(2) and 26 C.F.R. ' 1.107(b) in the 1980 tax year.

Warnke, at 1086.

The Taxpayer=s representative asserts that because the Taxpayer was not employed by a church, not allowing her to self-designate a housing allowance would be unfair and inconsistent with the intent of the statute. That argument was also rejected in Warnke. That is, a self-employed minister may still qualify for the exemption, but only if the allowance is predesignated by some Aother qualified organization.@ The court specified that a minister cannot self-designate a housing allowance.

What qualifies as a Aqualified organization@ is not clear. But such organization must be independent of the minister claiming the allowance, and also must be the entity or entities from which the minister received income. For example, see Holland, T.C. Memo 1980-717; and Rev. Rule CB 64-326, 1964-2, p. 37. In Holland, the U.S. Tax Court held that Holland, a self-employed minister without a home church, could have obtained prior designation from his Ahost churches@ to which he intended to travel and preach during the year. The exemption was disallowed because he failed to do so.

The Department=s denial of the refunds in issue is affirmed.

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

Entered June 28, 2000.

BILL THOMPSON
Chief Administrative Law Judge