

MARCH 18, 2019

Federal Appeals Court Upholds the “Parsonage Allowance”

This past Friday, the Seventh Circuit Court of Appeals, ruling in *Gaylor v. Mnuchin*, reversed a 2017 U.S. district court decision that had struck down as unconstitutional the longstanding federal income tax exclusion for certain religious housing expenses, commonly known as the “parsonage allowance.”

Under **Section 107 of the Internal Revenue Code**, a “minister of the gospel” may exclude from gross income some or all of either the allowance that he or she receives for housing expenses or the fair-market rental value of housing provided in kind. (The **tax regulations** extend the concept of “minister of the gospel” beyond Christianity to include personnel performing sacerdotal functions or leading religious worship more generally.) The fiscal impact of this “parsonage allowance” is not inconsequential, with the U.S. Treasury Department **estimating** that the allowance will cost \$9.3 billion in cumulative lost tax revenue from 2016 through 2025. The allowance has proven controversial on constitutional grounds, with the tax benefit being limited to religious employees.

The circumstances of the present case arose when the **Freedom From Religion Foundation**, a Wisconsin-based nonprofit that advocates for the separation of church and state, paid housing allowances to its two co-presidents and a former president, none of whom were “ministers” under Section 107. When the IRS eventually denied tax deductions for these amounts, the employees filed suit, claiming the Section 107 parsonage allowance was unconstitutional. The District Court in Wisconsin **agreed** on summary judgment, finding that Section 107 was an establishment of religion in violation of the First Amendment’s Establishment Clause insofar as it “[did] not have a secular purpose or effect and because a reasonable observer would view the statute as an endorsement of religion.” (*Gaylor v. Mnuchin*, 278 F. Supp. 3d 1081, 1085 (W.D. Wis. 2017)).

The Seventh Circuit disagreed. Applying a three-part test advanced by the U.S. Supreme Court in 1971, the Seventh Circuit found that Section 107 fulfilled a secular purpose, neither advanced nor inhibited religion as its principal or primary effect, and did not foster excessive government entanglement with religion. Applying a more recent Supreme Court test from 2014, the court also found that the Section 107 exclusion has not historically been viewed as an establishment of religion, with other traditional exemptions for church property being upheld in most cases.

The full text of the appellate decision can be found [here](#).

RELATED CATEGORIES

- Public Charities
- Religious Institutions

AUTHOR



Steven R. Chiodini
Of Counsel

ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

EDITORS



Stephanie L. Petit
Principal



Eric K. Gorovitz
Principal