

## Court Questions Tax Breaks Given to Clergy for Housing

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Members of the clergy may work in the house of the Lord, but many of them live in homes subsidized by a little-known tax break that a federal appeals court could soon declare illegal.

Known as a "parsonage allowance," the break allows clergy to exempt from their federal income taxes a portion of their salary earmarked for housing costs. The allowance makes it possible for about 850,000 mostly low-paid clergy across the country to live in the communities they serve.

But a narrow dispute over the size of an exemption taken by a California minister who started his own church, publishes self-help books and is one of the nation's wealthier religious figures has mushroomed into a broad question of whether the exemption is constitutional. Critics contend the break allows for the kind of entanglement of church and state that First Amendment guarantees are supposed to guard against.

"The government can neither favor nor disfavor a religion," says Erwin Chemerinsky, a law professor at the University of Southern California in Los Angeles. The case is now before the Ninth U.S. Circuit Court of Appeals in San Francisco. In an unusual move, the court appointed Prof. Chemerinsky to research the law and file an opinion. Government "can't advance or inhibit a religion" -- but that, he says, is precisely what the parsonage exemption does.

The panel of three judges, acting on its own, sidestepped the technical tax issue in March and ordered lawyers for the government and the minister to address the constitutional question.

The case is being watched closely because it could put at risk the longstanding tax exemption that religious organizations themselves enjoy, according to a lawyer for the Justice Department, which represents the Internal Revenue Service in the case. A decision striking down the parsonage exemption "would certainly have broad ramifications," he says.

The parsonage allowance, more than 80 years old, originated when many congregations attracted priests, rabbis and what the Tax Code calls other "ministers of the gospel" to their communities by providing housing. Since then, the exemption has been broadened to allow clergy to exempt the annual rental value of their homes from their taxable income, even if they own the homes themselves.

The dispute arose over exemptions claimed in the mid-1990s by the Rev. Richard D. Warren, an ordained Baptist minister who founded the Saddleback Valley Community Church in Trabuco Canyon, Calif., near Los Angeles, in 1980. The church, now one of the largest west of the Mississippi River, has more than 18,000 congregants.

From 1993 through 1995, "Pastor Rick," as he is known, earned \$619,000 in lecture fees and royalties from several self-help books he wrote and a "tape and book ministry" he operates called "The Encouraging Word." His annual salary from the church grew to \$100,000 in 1995 from \$42,496 in 1993. Mr. Warren, who bought a house in 1992 for \$360,000, claimed his entire church salary as his tax-exempt housing allowance for one year, and 80% of the salary for the other two years. Mr. Warren also claimed \$89,000 in mortgage interest deductions for those years, although those deductions aren't an issue in the case.

The IRS sued in 1996, contending Pastor Rick was entitled to exempt only the fair-market rental value of his home. The U.S. Tax Court in Washington, D.C., however, disagreed. In a decision two years ago, it allowed the entire allowance, ruling it was unclear whether Congress meant to impose any limit on it.

The decision by judges Stephen Reinhardt and James Browning to elevate the tax question into a constitutional issue has set off alarm bells. (The third judge wrote an angry dissent.) Congress got involved earlier this year and passed a bill siding with the IRS, saying the parsonage allowance is limited to the fair-market rental value of a home. President Bush signed the measure into law last week. With the narrow tax question resolved, both the Justice Department, on behalf of the IRS, and lawyers for Mr. Warren agreed to drop the case and asked the court to dismiss it.

But the constitutional question is still open. The appeal panel hasn't decided whether to dismiss. Technically it can decide the case even if both parties drop out, if it views the legal question as pressing.

Churches, too, are alarmed. Losing the parsonage allowance would cost them \$500 million a year, according to the National Association of Church Business Administration, in Richardson, Texas. "It's really the ministers in small churches that could be hurt," says executive director Simeon May. "In order for smaller congregations to continue to support pastors, they would have to increase pay, which means that mission work would have to go unfunded. The money's going to have to come from somewhere."

In rural East Franklin, Pa., the Rev. David Caves has been a part-time Presbyterian minister for 22 years. His church pays him \$26,000 a year, of which 35% is earmarked as a tax-free housing allowance. If the tax break were to disappear, the church, with only 120 congregants, could ill afford to raise his pay. "I'd continue the work," Mr. Caves says.

"The nation has a longstanding history of exempting religious organizations from tax," the Church Alliance, a coalition of religious organizations, wrote in a friend of the court brief. "The American constitutional tradition holds that while religion is not entitled to a public subsidy, it may be exempted from taxation so long as none was favored over others and none suffered interference."

In a separate case, the Supreme Court ruled in 1989 that religious organizations can't be singled out for tax exemptions. Such exemptions, three of the justices said, must apply equally to nonreligious groups. In that decision, the court held that a Texas sales tax exemption for the sale of Bibles was unconstitutional.

Prof. Chemerinsky says a housing allowance exemption limited only to clergy should also be unconstitutional, under the same reasoning. "The statute [creating the tax break] provides an enormous benefit to ministers of the gospel and to no one else," he says.

Meanwhile, in an unusual twist, Prof. Chemerinsky has become personally involved. On Wednesday, he filed a motion on behalf of himself, as a taxpayer, challenging the constitutionality of the exemption. "I'd like to see the court reach the constitutional question," he says. A decision on his motion also is pending.

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