

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**RICHARD D. WARREN AND  
ELIZABETH K. WARREN,**

**Petitioners-Appellees,**

**v.**

**COMMISSIONER OF INTERNAL REVENUE,**

**Respondent-Appellant**

**No. 00-71217**

**STIPULATION FOR DISMISSAL OF APPEAL**

**WHEREAS, the Commissioner of Internal Revenue (the Commissioner) issued a statutory notice of deficiency pursuant to Section 6212(b) of the Internal Revenue Code (26 U.S.C.) ("the Code" or "IRC") to Richard D. Warren and Elizabeth K. Warren ("the Warrens") on June 12, 1998, determining that they were liable for federal income tax deficiencies for the years 1993-1995 (plus certain penalties that were later conceded) attributable to their exclusion from gross income of a parsonage allowance under IRC § 107(2) that exceeded the fair market rental value of their home;**

**WHEREAS, the Warrens filed a timely petition in the United States Tax Court seeking redetermination of the asserted deficiencies (and penalties) by the Tax Court pursuant to IRC §§ 6213(a) and 7442;**

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**WHEREAS, the Tax Court entered a decision on June 27, 2000, pursuant to an opinion issued on May 16, 2000, finding that the Warrens were not liable for any deficiencies in tax for the years in issue, because the exclusion provided in IRC § 107(2) is not limited to the fair market rental value of a taxpayer's home;**

**WHEREAS, the Commissioner timely appealed the decision of the Tax Court to this Court;**

**WHEREAS, on May 20, 2002, the Clergy Housing Allowance Clarification Act of 2002 ("the Act," a copy of which is attached hereto as Exhibit A), was signed into law;**

**WHEREAS, the Act provides that a fair market value rental limitation shall apply under IRC § 107(2) for tax years beginning after December 31, 2001, but that, "notwithstanding any prior regulation, revenue ruling, or other guidance issued by the Internal Revenue Service, no person shall be subject to the limitations added to section 107 of such Code by this Act for any taxable year beginning before January 1, 2002" (except that any taxpayer who filed a return before April 17, 2002, for a tax year beginning before December 31, 2001, on the basis that the § 107(2) exclusion was so limited shall be bound by that position);**

**WHEREAS, the Act accordingly precludes the Commissioner from continuing to assert a deficiency against any taxpayer (including the Warrens) for any taxable year beginning before January 1, 2002, on the basis that the exclusion under IRC § 107(2) is limited to the fair market rental value of the taxpayer's home, but ensures that the exclusion shall be so limited for all taxpayers for all taxable years beginning after December 31, 2001;**

**WHEREAS, in these circumstances, there is no longer a case or controversy between the parties hereto, and the Solicitor General of the United States has determined that this appeal should therefore be withdrawn;**

**NOW, THEREFORE,**

**IT IS HEREBY STIPULATED by and between the parties hereto, through their respective counsel, pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, that the above-captioned appeal be dismissed with prejudice, with each**

party to bear its own appellate costs and attorney's fees, that an order of dismissal be made and entered herein by the Clerk of this Court, that conformed copies be transmitted to each of the parties, and that notification of the entry of such order be transmitted to the Clerk of the United States Tax Court.



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Counsel for the Appellees

Dated: this 20th day of May, 2002

Dated: this \_\_\_\_\_ day of May, 2002

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EXHIBIT A

One Hundred Seventh Congress  
of the  
United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington on Wednesday,  
the twenty-third day of January, two thousand and two*

An Act

To amend the Internal Revenue Code of 1986 to clarify that the parsonage allowance exclusion is limited to the fair rental value of the property.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Clergy Housing Allowance Clarification Act of 2002".

**SEC. 2. CLARIFICATION OF PARSONAGE ALLOWANCE EXCLUSION.**

(a) **IN GENERAL.**—Section 107 of the Internal Revenue Code of 1986 is amended by inserting before the period at the end of paragraph (2) "and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities".

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2001.

(2) **RETURNS POSITIONS.**—The amendment made by this section also shall apply to any taxable year beginning before January 1, 2002, for which the taxpayer—

(A) on a return filed before April 17, 2002, limited the exclusion under section 107 of the Internal Revenue Code of 1986 as provided in such amendment, or

(B) filed a return after April 16, 2002.

(3) **OTHER YEARS BEFORE 2002.**—Except as provided in paragraph (2), notwithstanding any prior regulation, revenue ruling, or other guidance issued by the Internal Revenue Service, no person shall be subject to the limitations added to section

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**107 of such Code by this Act for any taxable year beginning before January 1, 2002.**

***Speaker of the House of Representatives.***

***Vice President of the United States and  
President of the Senate.***



CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing motion and supporting declaration has been made on counsel for the appellees and the *amici curiae* on this 20th day of May, 2002, by sending a copy thereof by Federal Express in an envelope properly addressed to each of them as follows:

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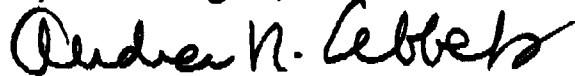
DECLARATION

Andrea R. Tebbets of the Tax Division of the Department of Justice,  
Washington, D.C., states as follows:

1. I am an attorney employed in the Appellate Section of the Tax Division of the Department of Justice, and in that capacity I have been assigned the primary responsibility for handling this appeal on behalf of the appellant.
2. The facts set forth in the accompanying motion to suspend further briefing are true to the best of my knowledge and belief.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 20th day of May, 2002, in Washington, D.C.



ANDREA R. TEBBETS

Attorney