

HOUSING ALLOWANCE FOR CLERGY – RETIREMENT PLAN ISSUES

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I. Introduction

Clergy, while performing services which are considered to be in the exercise of their ministry, are entitled to exclude from federal taxable income the portion of their compensation which is properly designated as housing (or parsonage) allowance. This designation (and consequent tax exclusion) is also available to clergy with respect to their retirement income, although challenging issues are sometimes posed for a retirement housing allowance designation in the case of clergy serving outside the church proper. The availability of housing allowance to active clergy also creates issues in applying certain limits to contributions made by and in their behalf to tax-sanctioned retirement plans. These issues are discussed below.

II. Housing Allowance for Retired Clergy

A. General Rule

Section 107 of the Internal Revenue Code of 1986, as amended (“Code”) permits “ministers of the gospel” performing services as such to exclude from their taxable income that portion of their compensation that is properly designated as a housing allowance.

Thus, in order to claim housing allowance, two principal conditions must be met:

1. *The allowance must be provided in payment for services that are ordinarily the duties of a minister of the gospel.* The Internal Revenue Service (“IRS”) has determined that a retired minister of the gospel is eligible to claim housing allowance because the allowance is paid as part of his/her compensation for past services as a minister of the gospel. Rev. Rul. 63-156, 1963-2 C.B. 79.
2. *The amount of housing allowance must be designated in advance by the employing church or other qualified organization.* The housing allowance must be designated as such “pursuant to official action taken by the employing church or other qualified organization.” The IRS has determined that the board of a national denominational pension fund can make a housing allowance designation on behalf of a qualified minister of the gospel. Rev. Rul. 75-22, 1975-1 C.B. 49. According to the IRS, the denominational pension fund was deemed to have met the requirements of being an “employing church” and the trustees of the fund were deemed to be acting on behalf of the local churches.

B. IRS No Ruling Policy

It is important to understand that, for the last ten years or so, the IRS has refused to rule on issues involving availability of housing allowance to retired clergy because the issue is “under study,” and this “no ruling” policy continues. Rev. Proc. 2007-3, Section 3.01(10), 2007-1 I.R.B. 108.

C. Clergy Serving Outside the Church Proper

Notwithstanding the no ruling policy of the IRS on clergy retiree housing allowance issues, it seems clear that clergy participating in denominational pension programs can claim housing allowance with respect to retirement pensions. And, despite any explicit guidance on the subject, Revenue Ruling 63-156 provides good authority for a designation of retiree housing allowance by an independent or nondenominational church for its retired clergy, or even by a “denominational” church maintaining its own retirement plan. But what about clergy serving outside the church proper? Can they properly claim housing allowance on pensions paid by their “non-church” employer, with the retiree housing allowance designation being made by that employer?

The answer would seem to turn on the availability of housing allowance to such a pastor during his/her period of active employment. If housing allowance is available to the pastor during that period of employment, then Revenue Ruling 63-156 also supports its availability with respect to retirement pensions. Certain issues associated with housing allowance for active pastors serving outside the church proper will now be examined.

1. Services Which Are Ordinarily the Duties of a Minister of the Gospel

A housing allowance is not automatically available to an ordained minister. The applicable tax regulations require that housing allowance must be provided in payment for “services which are ordinarily the duties of a minister of the gospel.” The definition of services that are ordinarily the duties of a minister of the gospel is found in the relevant income tax regulations which provide that such services include:

- the performance of sacerdotal functions;
- the conduct of religious worship;
- the administration and maintenance of religious organizations and their integral agencies; and
- the performance of teaching and administrative duties at theological seminaries.

The relevant tax regulations under section 107 also specifically refer to the self-employment Social Security tax regulations for further guidance. The section 107 regulations provide that “in general,” the rules under Treasury Regulation section 1.1402(c)-5 will be applicable to the determination as to whether the services in question are those that are ordinarily the duties of a minister of the gospel. Treasury Regulation section 1.1402(c)-5(b)(2) provides guidance on the definition of “service by a

minister in the exercise of his ministry” in the context of determining whether such services are subject to self-employment tax. These rules correspond closely to the rules promulgated under section 107 in that they provide that service performed by a minister in the exercise of his/her ministry includes the “ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination.”

The applicable income tax regulations provide the following five rules to be used in determining whether a minister’s activities fall within the scope of services performed in the exercise of his/her ministry:

- (a) The determination of what constitutes the performance of sacerdotal functions and the conduct of religious worship depends on the tenets and practices of the individual’s church. Treas. Reg. § 1.1402(c)-5(b)(2)(i).
- (b) Service performed in the control, conduct, and maintenance of religious organizations relates to directing, managing, or promoting the activities of an organization which is organized and dedicated to carrying out the tenets and principles of a particular faith. Treas. Reg. § 1.1402(c)-5(b)(2)(ii).
- (c) A minister who is performing the conduct of worship and ministration of sacerdotal functions is performing service in the exercise of his/her ministry, whether or not these services are performed for a religious organization. Treas. Reg. § 1.1402(c)-5(b)(2)(iii).
- (d) A minister’s service in the exercise of his/her ministry includes service performed for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination. Treas. Reg. § 1.1402(c)-5(b)(2)(iv); *see also* Priv. Ltr. Rul. 9144047 (June 3, 1991) for a discussion of what constitutes an integral agency of a church (ordained ministers serving on the faculty of a church affiliated college found to be entitled to claim housing allowance).
- (e) A minister can claim housing allowance if he/she is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, if such service is pursuant to an assignment or designation by a religious body constituting his/her church. If there is an appropriate assignment or designation, the minister’s duties need not involve the conduct of religious worship or the ministration of sacerdotal functions. Treas. Reg. § 1.1402(c)-5(b)(2)(v).

Assignment or Designation. This last rule is perhaps the most useful for purposes of ministers who are not actually working for an organization affiliated with a specific denomination. The important component of this rule is that there has to be an “assignment or designation” by the church. There are only a few published authorities specifically analyzing what constitutes an effective assignment or designation for this purpose:

- Boyer v. Commissioner, 69 T.C. 521 (1977), involved a minister who obtained secular employment teaching data processing at a state college. After teaching there for a year, the minister had the college ask his church to assign him to teach at the college, and the church made the assignment. The Tax Court concluded that the assignment was not valid because it was “virtually pro forma” and a ratification by the church of employment previously begun. The Tax Court said that an assignment must be significant and the minister must have been assigned for reasons directly related to the accomplishment of purposes of the church.

This decision is also the only authority located that discusses the interplay between the section 1.1402(c)-5 regulations and the section 1.107 housing allowance regulations. The Tax Court in Boyer concluded that even if the minister’s assignment was a valid assignment within the meaning of Treasury Regulation section 1.1402(c)-5(b)(2)(v), this finding would not mandate the ultimate conclusion that the minister’s activities were “ordinarily the duties of a minister of the gospel” within the meaning of the housing allowance regulations because those regulations provide “only that in general the rules provided in section 1.1402(c)-5 are used in determining whether services qualify for the ministerial rental exclusion.” According to the Boyer court, “the words ‘in general’ imply that section 1.107-1(a) only refers to section 1.1402(c)-5 for guidance, not for a mechanistic determination. The statute still requires, for the ministerial housing allowance, that the duties performed be those ordinarily performed by a minister of the gospel.”

Because Boyer’s duties did not fall within the ordinary range of such duties, the Tax Court held he was not entitled to the housing exclusion “even if the regulations under section 1.1402(c)-5 are deemed satisfied.” Thus, using the analysis of Boyer, even if there is a valid ecclesiastical assignment, the minister in question might still not be able to claim a housing allowance exclusion unless he or she was also performing duties considered to be ordinarily performed by a minister of the gospel.

- Private Letter Ruling 9720022 (Feb. 11, 1997) involved ministers employed by a nondenominational organization working with churches and people of faith throughout the world to serve the poor and “develop a leadership led by God for all individuals.” Ministers were assigned to work for the organization by their local churches or denominations. Quoting from the Boyer case, the IRS

concluded that the assignments in question satisfied the requirements of the section 1.1402(c)-5(b)(2) regulations, because they were not pro forma and were significantly and directly related to accomplishing the purposes of the assigning church or denomination. The IRS also noted that the ministers in question were not engaged in secular careers.

- Private Letter Ruling 8520043 (Feb. 15, 1985) involved an ordained minister teaching religion, ethics and theology at an independent Christian college. Although the church approved of the minister's work and annually gave him permission to continue teaching, the IRS denied the housing allowance exclusion, ruling that an assignment must be "more than a formality" and must be "significant." The IRS concluded that "[m]ore is required than mere ordained status and the perfunctory ratification by religious authority of secular employment obtained by the minister for non-church-related reasons."¹
- Private Letter Ruling 8826043 (Apr. 5, 1988) involved a pastoral counselor employed by a counseling center. The minister had obtained an assignment from his church in the form of a letter expressing support of the minister's counseling practice. The letter also "endorsed" the minister as a counselor in order to further the efforts and mission of the church. The IRS concluded that the church's general indication of support did not constitute evidence that the church specifically assigned the minister to perform counseling services on its behalf. Further, according to the IRS, there was no indication that the counseling services directly furthered the purposes of the church, even though the IRS acknowledged

¹ The regulations under Code sections 3121 and 3401 include the same five rules as Treasury Regulation section 1.1402(c)-5(b)(2) with respect determining whether a minister's services are performed "in the exercise of his ministry." (That is because Code section 3121(b)(8)(A) excludes from the definition of "employment" services performed by a minister "in the exercise of his ministry" and Code section 3401(a)(9) excludes from the definition of "wages" remuneration paid for such services.) Accordingly, authorities analyzing what constitutes an effective "assignment or designation" under the Code sections 3121 and 3401 regulations provide guidance in determining what constitutes an effective "assignment or designation" under the Code section 1402 regulations. The limited guidance that exists interpreting these regulations is consistent with the IRS guidance under Treasury Regulation section 1.1402(c)-5(b)(2).

In Revenue Ruling 78-229, 1978-1 C.B. 305, an ordained minister performed services for a manufacturing company. The minister performed the same services as other employees of the company. After working there for several years, the minister received a written assignment from his church. The IRS stated that services of a minister will not constitute assigned or designated services if any of the following circumstances are present: (1) the employer organization did not arrange with the minister's church for the minister's services, (2) the minister is performing the same services for the organization as employees who have not been designated, or (3) the minister performed the same services before and after the designation. Since all three of these circumstances were present, the IRS determined that the services performed by the minister were not assigned or designated services within the meaning of the regulations under Code sections 3121 and 3401.

that the church might benefit from the minister's counseling.² Finally, the IRS noted that the services were provided free from the church's control. *See also* Priv. Ltr. Rul. 9231053, in which the IRS concluded that a minister performing pastoral counseling was not eligible for housing allowance because only 5% of the minister's time was spent in conducting religious worship or performing sacerdotal functions. The assignment or designation issue was not discussed.

- Private Letter Ruling 7816044 (Jan. 19, 1978) involved an ordained minister who was the president of a nonprofit church advisory corporation, which held seminars and established developmental programs in order to provide financial advisory services to churches. Since the minister taught church management to a number of different denominations, the IRS determined that the minister was not acting "pursuant to an assignment or designation by a religious body."
- Tanenbaum v. Commissioner, 58 T.C. 1 (1972), involved a rabbi employed by the American Jewish Committee. The rabbi did not have an ecclesiastical assignment but argued that such an assignment was not possible in the Jewish faith because of the absence of a hierarchical structure. The Tax Court rejected this argument ruling that a valid assignment must be made by a religious body constituting the minister's church.
- Technical Advice Memorandum 7833017 (May 16, 1978). In this technical advice memorandum, the IRS examined whether the housing allowance exclusion applied in the case of ordained ministers of the gospel who were employed as teachers and administrators by an accredited interdenominational school of theology and concluded that "ordained ministers employed as teachers and administrators by a theological seminary generally are not considered eligible for the exclusion provided by section 107 of the Code unless the employing organization is an integral agency under the authority of a religious denomination." Thus, according to the IRS, because the ministers were employed by an interdenominational seminary, they were not entitled to the housing allowance exclusion provided by section 107.

Summary. In order for a minister to claim housing allowance, he/she must be performing services in the exercise of his/her ministry. If the minister cannot meet the first four rules discussed above, the minister's other option is to obtain a valid ecclesiastical assignment from the religious body constituting the minister's church. This assignment should not be pro forma or perfunctory, and it must be directly

² In Private Letter Ruling 8930038 (May 1, 1989), the minister requested a reconsideration of the IRS's decision and argued that the church's assignment or designation must be "inferred" from the church's actions and continuing relationship with the counseling practice. The IRS again ruled that the church's support of the minister in performing the counseling services did not constitute a valid assignment or designation.

related to accomplishing the purposes of the assigning church. IRS rulings suggest that the IRS takes a narrow view of the availability of the housing allowance exclusion in the case of clergy serving outside the church, so it is important to have a valid, “significant” ecclesiastical assignment, clearly related to the accomplishment of the purposes of the church.

2. The Housing Allowance Designation

To be excludible from income, the housing allowance must be designated in advance by an employing church “or other qualified organization.” The statutory language and the regulations provide no guidance on what constitutes a “qualified organization.” There are a few decisions that may shed some light on this issue:

- Boyd v. Commissioner, T.C. Memo. 1091-528 (1981). In this case, an ordained minister was employed as a chaplain by a city police department. The department’s chaplaincy program was established through joint efforts with a federation of churches. This federation retained supervision over the minister’s ecclesiastical performance and was closely involved with the police department with respect to the employer-employee relationship with each minister. The Tax Court determined that the federation was a “qualified organization” for purposes of making a housing allowance designation (even though it did not pay the chaplain’s salary) because of its constant and detailed involvement in the police department’s chaplaincy program.
- Private Letter Ruling 9052001 (July 17, 1990). The IRS disallowed the housing allowance of a prison chaplain. It distinguished the Boyd ruling based on the conclusion that the chaplain’s church was not actively involved in the day-to-day operation of the chaplaincy program and did not supervise the chaplains. The church’s involvement was limited to sending a letter to the state endorsing the chaplain and receiving an annual report from the chaplain. According to the IRS, this involvement was insufficient to qualify the church as a “qualified organization.”
- Private Letter Ruling 9720022 (Feb. 11, 1997), discussed above, permitted the designation of housing allowance to be made by a religious nonprofit organization which was not affiliated with any particular church or denomination. The ruling thus implicitly holds that the organization in question was a qualified organization within the meaning of the section 107 regulations.
- Private Letter 9743037 (July 28, 1997) permitted a housing allowance designation to be made by a nondenominational retirement home in behalf of its chaplains, citing Rev. Rul. 71-258, 1971-1 C.B. 283, which held that chaplains working for hospitals that were either church related or not church related were

performing services in the exercise of their ministry. This private letter ruling also implicitly holds that the nondenominational retirement home in question is a qualified organization for section 107 purposes.

- Private Letter Ruling 8519004 (Jan. 28, 1985). In this ruling, the IRS accepted a housing allowance designation by a nonprofit organization which employed a director of pastoral care at a public hospital. Although this ruling did not address directly the definition of “qualified organization,” it also implicitly suggests that a qualified organization need not be church-related. (See also Libman v. Commissioner, 44 T.C.M. 370 (1982), which permitted the United Jewish Appeal to make a housing allowance designation.)

Summary. If a minister has a valid ecclesiastical assignment in force, then the assigning church can make a housing allowance designation, although it will probably be necessary for that church to exercise significant oversight and supervision over that minister’s duties. Three private letter rulings suggest that the organization designating housing allowance need not be the same as the organization that has made a valid ecclesiastical assignment, and that the designating organization may not even need to be a church-related organization.

D. Self-Employment Taxes

The determination as to whether or not a minister is self-employed for purposes of the Self-Employment Contributions Act (“SECA”) is related to the determination of whether that same minister is eligible for housing allowance. As discussed earlier, the regulations under Code section 107 specifically refer to the SECA tax regulations for guidance on whether the minister is performing services that are ordinarily the duties of a minister of the gospel. In fact, all the guidance on what constitutes duties of a minister of the gospel are based on the SECA tax regulations.

Thus, if a minister is entitled to claim the housing allowance exclusion under Code section 107, that minister is necessarily also performing services that are covered under the self-employment taxes under SECA. The corollary to this conclusion is that if the minister is not eligible for housing allowance, the minister’s compensation is then subject to Social Security taxes under the Federal Insurance Contributions Act (“FICA”) and not SECA. As discussed earlier, however, the Boyer case suggests that there may not be a perfect overlap between the requirements of the self-employment tax regulations and the requirements of the housing allowance regulations. Therefore, it is possible that the IRS could conclude that a minister was covered under SECA but was not eligible for housing allowance. This specific issue has never been addressed directly.

E. Common Questions

The following are questions commonly raised by churches and religious non-profits in connection with the availability of housing allowance to retired clergy:

1. Can a nondenominational church, or a denominational church maintaining its own retirement plan, make an effective housing allowance designation? Is the answer any different if it has its own retirement plan, with employer contributions, or if it only forwards salary reduction contributions to a 403(b) provider?
2. Can a 403(b) provider make a housing allowance designation?
3. In the case of a nondenominational church, can it make a designation with respect to all of a pastor's retirement benefits, even those accumulated while the pastor was serving other unrelated, independent churches?
4. Can a housing allowance designation be made with respect to retirement benefits accumulated through several different vendors, such as in several different 403(b) annuity contracts? What about with respect to a pastor's IRA?

The IRS "no ruling" posture on clergy retiree housing allowance issues means that definitive guidance cannot be obtained on these questions. Instead, clergy and employers are left to make determinations based on the limited guidance available in the area, from which certain general principles can be withdrawn to create what might be called a taxpayer "safe harbor" approach to the relevant issues.

III. Contribution Limitations Issues With Respect to Housing Allowance

As noted previously, section 107 provides that a minister of the gospel can exclude from gross income certain expenses directly related to his/her maintenance of a residence. In some cases, clergy housing is provided directly by the church, and the section 107 exclusion operates to exclude the current rental value of the home from income. In other cases, a pastor, priest or rabbi purchases his/her own home out of his/her funds, and the church which they serve then designates a portion of his/her salary as housing allowance eligible for exclusion under section 107. In either event, it is important to consider how the section 107 exclusion affects clergy participation in certain church-sponsored retirement plans as a result of its interplay with the contribution limits under sections 403(b) and 415.³

³ The section 107 exclusion does not affect the section 402(g) limit on elective salary reduction contributions because such limit places an affirmative cap on this type of contribution, irrespective of whether the contributing individual's salary is taxable or nontaxable. However, because the section 402(g) limit is subsumed by the section 415 limits, clergy with little or no housing allowance may not be able to make elective salary reduction contributions because of the operation of the latter limit.

A. Maximum Exclusion Allowance.

In the case of clergy participating in a section 403(b) plan, the section 403(b)(2) exclusion allowance formula (which was of course eliminated, effective January 1, 2002, but which is still relevant for open tax years) is in part based on an individual's "includible compensation." That term is defined in Code section 403(b)(3) as the amount of compensation received by the individual "and which is includible in gross income (computed without regard to section 911)" for the individual's most recent one year period of service (as determined under the 403(b) rules) (emphasis added).

B. 415(c) Contribution Limits.

Effective January 1, 2002, section 415(c) became the only other contribution limit (besides section 402(g)) applicable to section 403(b) plans. Section 415(c)(1) provides that contributions and other additions to a participant's account, when expressed as an "annual addition" (within the meaning of section 415(c)(2)) cannot exceed the lesser of \$40,000 or 100% of the participant's "compensation." (For 2007, the section 415(c) contribution limit is \$45,000.) Section 415(c) contains the rather circular statement that for purposes of the rule just quoted, a "participant's compensation means the compensation of the participant from the employer for the particular year in question." Section 415(c)(3)(A). However, the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") amended section 415(c)(3) to provide that, in the case of a section 403(b) annuity, the term "participant's compensation" means the participant's includible compensation determined under section 403(b)(3). Thus, in the case of section 403(b) annuity plans, the "includible compensation" definition of section 403(b)(3) (noted above) is used to determine the section 415(c) "100% of compensation" limit. However, in the case of a section 401(a) qualified church plan, the section 415(c)(3) definition is used.⁴

The regulations promulgated under section 415 shed light on the intended meaning of the term "compensation" as used in section 415(c). There we find that, for purposes of the section 415(c) contribution limitation, the term "participant's compensation" for any limitation year is set forth in Treasury Regulation section 1.415-2(d). *See* Treas. Reg. § 1.415-6(a)(3). The "2(d) regulation" provides that:

For purposes of applying the limitations of section 415, the term "compensation" includes all of the following . . .

- (i) The employee's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the

⁴ The section 415(c)(3)(A) definition is also used for open tax years prior to 2002.

employer maintaining the plan to the extent that the amounts are includible in gross income

Treas. Reg. § 1.415-2(d)(2)(i). Treasury Regulation section 1.415-2(d)(3)(iv) states that the term “compensation” does not include items such as “[o]ther amounts which receive special tax benefits”

Although housing allowance excluded from income under section 107 is not specifically listed in the relevant regulations’ discussion of items not included in “compensation” for section 415 purposes, it would appear that it was the intent of the drafters of the section 415 regulations that such amounts not be permitted to be counted as section 415 compensation.

C. Alternate Definition of Compensation.

However, this is not the end of the section 403(b)/415/housing allowance analysis. Treasury Regulation section 1.415-2(d)(11) contains alternative definitions of the term “compensation” for section 415 purposes. These alternative definitions are based on the definition of compensation used for wage reporting purposes (as modified by the section 415 regulations for this purpose) and, if used, will be considered automatically to satisfy section 415(c)(3). Basically, these definitions work off the definition of “wages” set out in section 3401(a). Importantly, the section 415 regulations contain this statement:

Compensation [under either alternative definition] must be determined without regard to any rules under section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)).

Treas. Reg. § 1.415-2(d)(11)(i); *see also* Treas. Reg. § 1.415-2(d)(11)(ii).

Turning to section 3401(a), we find that the term “wages” as used therein does not include amounts paid “for services performed by a duly ordained, commissioned or licensed minister of the church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.” Code § 3401(a)(9). The argument has been made that, because compensation under the alternative definition of compensation used in section 415 is to be determined without regard to limitations on remuneration included in section 3401(a) wages “based on the nature of the employment or the services performed,” all amounts paid for services performed by a minister (including housing allowance) are to be included as compensation for section 415 purposes.

But what about section 403(b) and its definition of the term “includible compensation”? Even if the analysis just used for section 415 purposes works for that

section, wouldn't you still have a problem under the section 403(b) limits, since the amount that can be contributed in a particular year is the lesser of the section 403(b) exclusion allowance limit or the 415(c) contribution limit? Section 403(b) contains a special rule, in section 403(b)(2)(B), that provides, in the case of an employee who makes a special election provided in section 415(c)(4)(D) to have the special contribution limit rule of section 415(c)(4)(C) apply, that the employee's 403(b) exclusion allowance then becomes the amount which could be contributed under the section 415(c) "regular" limit. Thus, the argument goes, the section 403(b) exclusion allowance limitation is no longer applicable in the event of such an election, and the alternative definition of "compensation" contained in the section 415 regulations insures that housing allowance can be counted for purposes of both the section 403(b) and section 415 contribution limits.

But does this argument work? In the past, the author has had informal conversations with representatives of the IRS National Office with respect to this issue, and the individuals with whom conversations have been held have indicated that it was not intended that the use of the section 3401(a) wages definition would override the overarching rule that amounts must be includible in income in order to be treated as section 415 compensation.

Recently, the IRS has issued a long-awaited private letter ruling that directly addresses the question. Priv. Ltr. Rul. 200121794 (June 7, 2001). This ruling holds that a minister's tax-free housing allowance may not be treated as compensation under the alternative definitions of compensation permitted by Treasury Regulation sections 1.415-2(d)(11)(i) and (ii). The reasoning used by the IRS is interesting. First, the IRS concluded that excludible compensation like housing allowance does not constitute section 3401(a) wages in the first instance, while the special rule for clergy in section 3401(a)(9) only "excludes from wages *taxable* compensation paid to a minister . . ." (emphasis added). Next, the IRS wrote a short treatise explaining why housing allowance does not have to be reported as wages under sections 6041(d) or 6051(a)(3), thus deflecting any argument that those reporting requirements provide a basis for treating housing allowance as compensation under Treasury Regulation section 1.415-2(d)(11)(i).

Query: As noted above, EGTRRA provides that, in 2002 and subsequent years, the term "participant's compensation," as it applies to a section 403(b) plan, is the participant's includible compensation under section 403(b)(3). Does this, coupled with the repeal of the maximum exclusion allowance, render the issue addressed in the ruling moot in 2002 and later years? (The ruling continues to be relevant for section 401(a) qualified plans.)