

Federal judge strikes down tax-free housing for clergy

Leaders of the Freedom From Religion Foundation, a nonprofit, requested the tax benefit. The IRS rejected their claim.

by [Scott Bauer](#) in the [November 8, 2017](#) issue



Dan Barker and Annie Laurie Gaylor, copresidents of the Freedom From Religion Foundation. [Some rights reserved](#) by [S Pakhrin](#).

A federal judge in Wisconsin has struck down as unconstitutional a law that gives clergy tax-free housing allowances, a ruling that could have far-reaching ramifications for religious leaders who have fought for years to keep the substantial financial benefit.

Under the federal law passed in 1954, a “minister of the gospel” doesn’t pay income taxes on that part of a housing allowance designated as compensation. The Freedom From Religion Foundation, based in Madison, [argued that the law discriminates against secular employees](#).

The benefit saves clergy, including religious leaders from traditions other than Christianity, \$800 million a year in taxes, according to the latest estimate from the congressional Joint Committee on Taxation.

Under the law, housing allowances paid to clergy as part of their salary can be subtracted from their taxable income. The FFRF noted that a clergy member can use the untaxed income to purchase a home and then, in a practice known as double dipping, deduct property taxes and interest paid on the mortgage.

U.S. District Court judge Barbara Crabb ruled in October that the exemption provides an unconstitutional benefit to religious persons and no one else, violating the establishment clause of the U.S. Constitution.

“In reaching this conclusion, I do not mean to imply that any particular minister is undeserving of the exemption or does not have a financial need for one,” Crabb wrote. “The important point is that many equally deserving secular employees (as well as other kinds of religious employees) could benefit from the exemption as well, but they must satisfy much more demanding requirements despite the lack of justification for the difference in treatment.”

Crabb also struck down the law in 2013, but the Seventh U.S. Circuit Court of Appeals reversed the ruling, saying that the copresidents of the antireligion group who challenged it didn't have standing to bring the lawsuit because they had never been denied the housing exemption.

So in 2015, Annie Laurie Gaylor and Dan Barker, copresidents of FFRF, requested the tax benefit and were rejected by the IRS, leading them to file a new lawsuit last year.

U.S. Department of Justice spokeswoman Lauren Ehrsam declined to comment. The Justice Department was defending Treasury Department secretary Steve Mnuchin and Internal Revenue Service commissioner John Koskinen, who were named in the lawsuit.

Gaylor and Barker heralded the victory.

“It's a huge ruling,” Gaylor said. “I think everybody knows we're right, they just don't like changing the law.”

While Crabb ruled the law unconstitutional, she deferred taking action on granting relief, which could include an injunction to block the granting of the tax benefit. Crabb ordered both sides to make arguments in the weeks following the ruling on what remedies would be appropriate.

[Richard Hammar, a lawyer and editor of the website churchlawandtax.com, noted that the ruling did not apply to parsonages, “since the Freedom From Religion Foundation’s officers were not provided free housing and so lacked standing to challenge the parsonage exclusion.”

Hammar also wrote: “Perhaps of most interest was Judge Crabb’s suggestion that the tax code be amended to expand the availability of a housing allowance to taxpayers ‘who work for tax exempt organizations under §501(c)(3) and are on call at all times.’”] —Associated Press; added information

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