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paying income taxes on compensation that is designated part of a housing allowance.

Nov. 25, 2013

A federal judge has found unconstitutional a law that lets clergy members avoid paying income taxes on compensation that is designated part of a housing allowance.

The decision Friday by U.S. District Judge Barbara Crabb could have far-reaching financial ramifications for pastors, who currently can use the untaxed income to pay rental housing costs or the costs of home ownership, including mortgage payments and property taxes.

"It's a really big deal," said Annie Laurie Gaylor, co-president of the Madison-based Freedom From Religion Foundation, which filed the lawsuit. "A church currently could pay a minister \$50,000 but designate \$20,000 of it a housing allowance so that only \$30,000 would be taxed as salary."

Crabb acknowledged in her decision that the exemption is a boon to ministers, referencing a 2002 statement by then-U.S. Rep. Jim Ramstad of Minnesota that the tax exemption would save clergy members \$2.3 billion in taxes from 2002-2007. But she said the magnitude of the benefit only underscores what's wrong with the law.

The exemption "provides a benefit to religious persons and no one else, even though doing so is not necessary to alleviate a special burden on religious exercise," Crabb wrote.

The defendants in the case are U.S. Treasury Secretary Jacob Lew and acting IRS commissioner Daniel Werfel. Attempts to reach those agencies late Friday were unsuccessful.

Crabb said the defendants did not identify a reason that a requirement on ministers

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“Once the clergy get wind of it, I expect they will be very upset,” she said.

Crabb is a judge in the U.S. District Court for the Western District of Wisconsin.

The law, passed by Congress in 1954, allows a clergy member to use the untaxed income to purchase a home, and then, in a practice known as “double dipping,” deduct interest paid on the mortgage and property taxes, the foundation said.

“The court's decision does not evince hostility to religion — nor should it even seem controversial,” foundation attorney Richard L. Bolton said in a statement. “The court has simply recognized the reality that a tax-free housing allowance available only to ministers is a significant benefit from the government unconstitutionally provided on the basis of religion.”

Clergy may exempt from taxable income up to the fair market rental value of their home, a measure particularly helpful to well-heeled pastors, Gaylor said.

“When you're dealing with some of these mega-church pastors with huge mansions, they can be paid an enormous amount in housing allowances,” she said.

On its website, GuideStone, a Christian financial services provider based in Dallas, calls the housing allowance “the most important tax benefit available to ministers.”

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