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Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA. Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Is an ordained minister who works as a Spiritual Care Coordinator in a medical service centre eligible for a clergy residence deduction pursuant to paragraph 8(1)(c) of the Income tax Act (the "Act") ?

POSITION: Yes.

REASONS: Satisfies both the status and function tests.

XXXXXXXXXX

2010-038725

V. Srikanth

March 10, 2011

Dear XXXXXXXXXXXX :

Re: Clergy Residence Deduction

This is in response to your correspondence dated November 16, 2010 and February 24, 2011, wherein you requested our views on the clergy residence deduction provided for in paragraph 8(1)(c) of the Income Tax Act (the "Act"). Specifically, you wanted our opinion on whether, as an ordained minister and working as a chaplain/spiritual care coordinator in a long term care facility, you qualified for the clergy residence deduction pursuant to paragraph 8(1)(c) of the Act.

Our Comments

Written confirmation of the tax implications inherent in actual proposed transactions is given by this Directorate only where the transactions are the subject of an advance income tax ruling request submitted in the manner set out in Information Circular 70-6R5, entitled 'Advance Income Tax Rulings'. This Information Circular and other Canada Revenue Agency ("CRA") publications can be accessed on our website at <http://www.cra-arc.gc.ca>. If, however, the particular transactions are completed or partially completed, the enquiry should be addressed to the relevant Tax Services Office. Your request was not submitted in the format required for an advance income tax ruling request, however, as stated in paragraph 22

of IC 70-6R5, we do provide written opinions on general enquiries which are not binding and we are prepared to provide you with the following comments.

Generally, to be eligible for the clergy residence deduction, an individual must be a member of the clergy, a member of a religious order, or a regular minister of a religious denomination (the status test). When one of these conditions is met, the individual must be in charge of, or ministering to, a diocese, parish or congregation, or engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination (the function test).

Further, in order to qualify for the clergy residence deduction, pursuant to paragraph 8(1)(c) of the Act, the person must satisfy both the status and the function tests discussed below.

Status test

In order to satisfy the status test, the person must be one of the following:

- * a member of the clergy;
- * a member of a religious order; or
- * a regular minister of a religious denomination.

In your opinion, you satisfy the status test by virtue of being a member of the clergy.

Paragraph 4 of the Interpretation Bulletin IT-141R (Consolidated), entitled 'Clergy Residence Deduction', states that a "member of the clergy" is a person set apart from the other members of the church or religious denomination as a spiritual leader. Priests, pastors, ministers, rabbis, imams, commended workers and other persons who have been commended, licensed, commissioned or otherwise formally or legitimately recognized for religious leadership within their religious organization may be members of the clergy.

In the given submission, you have indicated that you are an ordained minister and have provided us with a copy of the 'Certificate of Ordination' issued by the XXXXXXXXXXXX . Accordingly, we agree with your view that you are a member of the clergy and that you satisfy the status test.

Function test

In order to qualify for the deduction, a person who has the required status must also be employed in a qualifying function. The person's function must be one that he or she is:

- * in charge of, or ministering to, a diocese, parish or congregation;
- or

* engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination.

You are of the view that you satisfy the function test by being 'in charge of, or ministering to, a diocese, parish or congregation'. You have indicated that you are employed as a Chaplain/Coordinator, Spiritual Care-Residential Care for XXXXXXXXXXXX (the "Centre") in XXXXXXXXXXXX . It is our understanding that the Centre is a medical service centre which offers a wide variety of services, including, the Spiritual Care Services, and that, as a 'Spiritual Care Practitioner', you "provide spiritual care for admitted inpatients, residents, clients and their families, and facility staff regardless of their religious affiliations."

In our view, the Centre is not considered a parish or a diocese, for the purpose of paragraph 8(1)(c). (The Black's dictionary defines a 'parish' as "a division of a town or district, subject to the ministry of one pastor", and a 'diocese' as "a territorial unit of the church, governed by a bishop, and further divided into parishes".) Therefore, in your situation, in order for you to satisfy the function test as you assert, it needs to be determined whether you can be considered to be 'in charge of or ministering to a congregation'.

Paragraph 13 of IT-141R states the following with respect to "Ministering":

"Ministering" is a very broad concept of serving or attending to the needs of a congregation, diocese or parish, or its individual members. This should be looked at within the context of the religious organization's practices and expectations. If a person who meets the status test is employed within a congregation, he or she is considered to be ministering to a congregation if he or she is fulfilling a pastoral or ministerial role in the manner requested by that congregation. If a person who meets the status test is employed by a religious organization outside the order or religious denomination, he or she is considered to be ministering to a congregation such as a church, a chaplaincy audience, or a disadvantaged group if he or she is fulfilling a pastoral or ministerial role consistent with the religious ministry of the organization in which such person has status."

According to your job description, some of the duties you perform at the Centre are to:

1. Plan, organize, coordinates and evaluate spiritual care services for residents, patients, families and staff; provide for and/or arranges for spiritual care services to patients, families and staff on a multi-faith, multicultural basis for an assigned location(s); facilitate crisis interventions for staff, patients, resident and/or families, as needed.
2. Implement programs involved with spiritual care services for patients, families, friends and staff; provide information regarding spiritual care for families, staff and the community; liaise with

appropriate community faith groups to develop and maintain spiritual care services for an assigned location(s).

3. Participate in the development of clinical decision support guidelines for staff, policies and procedures and/or protocols by reviewing related literature, following current developments in spiritual care and participating in research activities; provide recommendations to the Education Coordinator, Spiritual Care; implement changes as directed.

4. Participate in orientation and continuing education of spiritual care visitors in coordination with the Education Coordinator, Spiritual Care and local faith communities.

You mention that you become the pastor/priest of the residents of the Centre as "they can no longer physically attend the religion of their choice." Further, in summarizing your duties in relation to the residents of the Centre, you state that:

XXXXXXXXXX

In resolving whether your job description is considered to be 'ministering to a congregation', comments made in the following jurisprudence may be applicable.

In McGorman et al v MNR 99 DTC 591, in resolving whether the appellant's duties were considered 'ministering', Bowman, J.T.C.C. made the following comments:

"His work encompassed everything that is traditionally done by a minister or priest who has one church. "To minister" means merely "to serve", or "to attend to the needs of". A physician or nurse ministers to the physical needs of a patient. A clergyman, minister, priest or spiritual counsellor ministers to the spiritual needs of a congregation, collectively or individually. Ministers are, however, called on to do much more than offer spiritual guidance. They provide psychological and marital counselling. They advise on family and career related matters. It is to the church that people turn when faced with the infinite variety of problems that arise in life. Ministering is a very broad concept, particularly in the context of the work of a person of the cloth."

In Alemu et al v The Queen, 99 DTC 714, in concluding that the appellant, Reverend Shantz, was considered to be 'ministering to a congregation', Bowman, J.T.C.C. had the following comments:

"So far as Reverend Shantz is concerned, the question is whether he is ministering to a congregation. His function as minister at large to Christian Horizons involved ministering to families of the residents of the Christian Horizons homes, the staff members of Christian Horizons, the residents of the homes and families of prospective residents. This included daily devotionals, spiritual counselling and prayer, organizing and leading worship services at staff meetings and retreats. His ministering covered a broad range of pastoral activities, preaching, counselling and participating in Sunday worship services. I must confess

that I am at a complete loss to understand on what possible basis it can be said that Reverend Shantz, whose role was substantially that of chaplain to the residents, staff and families of Christian Horizons, was not ministering to a congregation."

Further, paragraph 15 of IT-141R states: "Congregations can be of a diverse and fluid makeup and require neither voluntary attendance nor homogeneity of religious belief. Chaplains in hospitals, jails, the armed forces and other such organizations are generally considered to minister to congregations."

Based on the review of your job description and the Courts' comments, we agree that you satisfy the function test of 'ministering to a congregation'.

Since you have satisfied both the status and function tests described above, in our view, you qualify for the clergy residence deduction provided for in paragraph 8(1)(c) of the Act.

We trust that our comments will be of assistance.

Yours truly,

R.A. Albert, CA
For Director
Financial Sector and Exempt Entities Division
Income Tax Rulings Directorate