
**TECHNICAL INTERPRETATIONS
RE: CLERGY RESIDENCE DEDUCTION**

*By Jennifer M. Leddy **

A. INTRODUCTION

The Canada Revenue Agency (“CRA”) Income Tax Rulings Directorate (the “Directorate”) has recently issued three technical interpretations regarding the clergy residence deduction provided for in Section 8(1)(c) of the *Income Tax Act* (the “Act”). The Directorate provides written interpretations of specific provisions of income tax law both to taxpayers directly, and by assisting other areas of the CRA in dealing with complex tax issues. However, it should be noted that technical interpretations provided to the public are not income tax rulings and are therefore not binding on the CRA.

According to the Act, in order to qualify for the clergy residence deduction, an individual must meet two tests: the “status test” and the “function test.” To satisfy the status test, the individual must be one of the following: (1) a member of the clergy; (2) a member of a religious order; or (3) a regular minister of a religious denomination. If the first test is met, the individual must satisfy the function test, meaning 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. All three technical interpretations dealt with the application of the status test. This *Church Law Bulletin* will review the technical interpretations and discuss their significance.

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B. GUIDELINES IN CRA INTERPRETATION BULLETIN IT-141R

CRA's Interpretation Bulletin IT-141R ("the IT Bulletin") provides general guidelines regarding qualifications for the deduction in section 8 (1) (c) of the Act. In the IT Bulletin "member of the clergy" is defined as "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."

With respect to the second element of the status test, the IT Bulletin provides that generally, the following characteristics will be indicative of a religious order: (1) the purpose of the organization should be primarily religious; (2) the members must agree to adhere to and in fact adhere to a strict moral and spiritual regime of self-sacrifice and dedication to the goals of the organization to the detriment of their own material well being; (3) the commitment of the members should be full-time and of a long-term nature; (4) the spiritual and moral discipline and regime under which the members live must be markedly stricter than that to which the lay church members are expected to adhere; (5) admission to the order must be in accordance with strict standards of spiritual and personal suitability; and (6) there should generally be a sense of communality.

Finally, with respect to the third element of the status test, "a regular minister" is a person who meets the following qualifications: (1) is authorized or empowered to perform spiritual duties, conduct religious services, administer sacraments and carry out similar religious functions; (2) is appointed or recognized by a body or person with the legitimate authority to appoint or ordain ministers on behalf of or within the religious denomination; and (3) is in a position or appointment of some permanence.

C. THE TECHNICAL INTERPRETATIONS

(1) The first technical interpretation, dated April 12, 2010, concerned whether an employee whose main responsibility is to oversee the development of external communication media for a church qualifies for the clergy residence deduction. The employee at issue claimed to be a "regular minister" in satisfaction of the status test. However, CRA determined that his job responsibilities appeared to involve technical rather than spiritual duties and there was no indication that he was involved in performing any religious duties or services. There was no mention in the decision as to whether he had been appointed to perform spiritual duties or whether his appointment was of some permanence. Therefore, the employee could not be

considered a “regular minister”. As the status test was not met, no further analysis was done to determine whether the employee satisfied the function test.

(2) The second technical interpretation, dated April 20, 2010, addressed the issue of whether a “faith based non-profit social service organization” can be considered a religious order for the purpose of claiming a clergy residence deduction. The above mentioned six criteria were applied to the organization whose mandate is “to bring hope to the hungry, hurting and homeless through showing the love of God through word and deed.” CRA concluded that the organization did not satisfy the first criteria because religion did not appear to be the primary purpose of the organization, but did not provide the basis for this conclusion. Since many faith based organizations would consider providing for the hungry and homeless through social outreach to be both a result and requirement of their faith, it would have been helpful to know if the organization had drawn a connection between its faith and social services. CRA went on to consider the other five criteria, but held that there was not enough information to comment on whether the criteria were met. CRA did, however, provide some indication of factors it might consider in future cases, such as a code of conduct under the fourth criteria and a probationary period, conduct, dress, public statements and worship under the fifth criteria. The interpretation stated that all six criteria must be met, notwithstanding that the IT Bulletin stated that the criteria were indicative characteristics. Since at least one of the six criteria was not met in this case, the organization was not considered a “religious order” for the purposes of the deduction and the status test was not met.

(3) The third technical interpretation, dated May 5, 2010, concerned whether an Executive Director of a charitable organization was eligible for a clergy residence deduction. The charity at issue was described as “a non-denominational organization focused mainly on spiritual development of youth, evangelism and short-term missions.” The Executive Director was not currently affiliated with any specific denomination as an ordained minister and had provided no further information indicating that he or she was a member of the clergy. Therefore, the Executive Director could not be considered a “member of the clergy” for the purposes of the first element of the status test. With respect to the second element of the status test, CRA determined that the first criterion was not met because the primary purpose of the charity was not religious. CRA noted that there was no element of worship involved and the charity’s Constitution and Statement of Faith were not sufficient to constitute a religious ideology. The technical interpretation did not reproduce the Constitution or Statement of Faith. Since at least one of the six criteria was not met, the charity could not be considered a

“religious order”. The Executive Director also did not satisfy the third element of the status test. CRA determined that since the charity is a non-denominational organization, the Executive Director cannot be considered a “regular minister of a religious denomination.” Because the Executive Director did not satisfy any of the three elements of the status test, CRA did not need to consider the function test. The Executive Director did not qualify for the clergy residence deduction.

D. CONCLUSION

Although the CRA Income Tax Rulings Directorate is able to issue advanced rulings based upon proposed statements of facts regarding specific provisions of the Act that are binding on CRA, technical interpretations do not involve the same degree of formalities and are therefore not binding. Notwithstanding this limitation, the technical interpretations regarding the clergy residence deduction discussed above are helpful in providing a useful guidance for individuals seeking to claim the deduction in certain situations and will therefore prove to be a useful resource tool for religious charities and their employees.