

Section I

Employment Issues

Chapter 1: Ministers of the Gospel

STATUS	100
Pastors.....	105
Certified Teachers/DCEs/DCOs/Deaconesses/ Parish Assistants/Certified Lay Ministers/ Directors of Parish Music/and Directors of Family Life Ministry.....	110
Ministers of Religion—Ordained or Commissioned.....	115
Call, Appointment and Contract.....	120
The Importance of Being “in Ministry”	140
EMPLOYEE OR SELF-EMPLOYED	200
Introduction	205
The Common-Law Rule	210
Ministers as Employees	215
INCOME, SOCIAL SECURITY AND MEDICARE TAXES	300
Reporting Wages	305
Forgiveness of Debt.....	310
Gift Versus Compensation.....	315
Reporting Other Compensation.....	320
Social Security and Medicare Taxes.....	325
Self-Employment Tax.....	330
Self-Employment Tax Rate	335
Declaration of Estimated Taxes	340
Estimated Taxes Worksheet.....	345
Voluntary Withholding for Ministers	350
Exemption from Self-Employment Tax.....	360
Taxes and Ministers/2018 Edition	370
EMPLOYMENT OF RETIRED MINISTERS OF THE GOSPEL	400
Introduction	405
Allowable Earnings Under Social Security.....	410
Other Income.....	415
Taxes.....	420
Housing Allowance.....	425
IRS RULINGS	900
Male Teachers Entitled to Tax-Free Housing.....	905
Male Teachers as “Ministers of the Gospel”	910
Voluntary Withholding.....	915
Female Teachers	920

1.100: Status

1.105: Pastors

Ordained pastors (including ordained specific ministry pastors) in the exercise of the ministry in The Lutheran Church—Missouri Synod (LCMS) are considered “ministers of the Gospel” by the Internal Revenue Service (IRS) and are subject to special tax rules and privileges.

1.110: Certified Teachers/DCEs/DCOs/ Deaconesses/Parish Assistants/ Certified Lay Ministers/Directors of Parish Music/and Directors of Family Life Ministry

All certified teachers, directors of Christian education, directors of Christian outreach, deaconesses, parish assistants, certified lay ministers, directors of parish music and directors of family life ministry who are listed on Synod’s roster (“Lutheran Annual,” under Minister of Religion — Commissioned) as graduates from one of Synod’s educational institutions or who are qualified workers that have completed an approved colloquy or distance learning program and are in the exercise of the ministry are “ministers of the Gospel” because of specific rulings issued by the IRS. (See 1.905, 1.910 and 1.920. Ref. PLR 92-21025.) The IRS application to the professional church worker is often misunderstood by some IRS employees and tax preparers.

1.115: Ministers of Religion— Ordained or Commissioned

The Lutheran Church—Missouri Synod, in its 1983 convention, both reaffirmed the importance and classified the status of its ministers of religion. In its 1986 convention, it extended what was begun in 1983 — to consistently refer to its ministers as either ordained ministers or commissioned ministers.

Resolution 5-09A from the 1983 convention reaffirms the LCMS position that many different functions belong to the office of the public ministry. These functions may be performed, to varying degrees, by persons holding various positions and titles. In order to clarify these positions and titles, the Synod has established two classifications: “minister of religion, ordained;” and “minister of religion, commissioned.” The functions performed by persons classified as “ministers of religion” contribute vitally to the discharge of the office of the public ministry. This is evidenced by the fact that such ministers are voluntarily eligible to hold membership in The Lutheran Church—Missouri Synod, a status not granted to any other individuals.

1.120: Call, Appointment and Contract

Although a call is in nature also a contract, synodical usage has differentiated between call and contract. Divine calls may be extended only to those persons who are on or who are eligible for inclusion on the synodical membership roster.

A call may be for a limited period of time (non-tenured) or permanent (tenured).

A contract is an agreement between an appointing body and an individual. Such an arrangement applies when the individual is not eligible for a call, and may apply in situations in which either party does not choose to use a call arrangement. A non-synodically trained person **cannot be called**, only **contracted**.

Also, in some instances, synodically trained persons called to a congregation exercise contracts instead of call documents.

However, it should be clear in the following sections that those persons in ministry on Synod’s roster are to be treated as ministers of the Gospel for payroll tax purposes, regardless of whether they execute a contract or a call document for full-time or part-time status.

1.140: The Importance of Being “in Ministry”

In addition to being an ordained or commissioned minister within The Lutheran Church—Missouri Synod, an individual must earn his/her compensation “in the exercise of the ministry” in order to be entitled to the treatment afforded to a “minister of the Gospel” under tax law.

“In the exercise of the ministry” is explained in this condensed version of an article by Synod’s legal counsel.

The Internal Revenue Code allows a “minister of the Gospel,” under certain circumstances, to exclude from taxable income the value of a parsonage or a housing allowance. To qualify for the exclusion, the home or housing allowance must be provided to a minister and must be part of compensation paid for services as a minister of the Gospel. Being ordained or commissioned or being on a roster is not enough.

If a minister is not conducting activities in the “exercise of his/her ministry,” he/she cannot take advantage of the parsonage or housing allowance exclusion. Both the minister and the employer may be penalized if this requirement is ignored. The exercise of the ministry includes teaching or holding administrative positions in churches, parochial schools, colleges or universities and other religious organizations under the authority of a church.

Ministers, congregations and other organizations served by them should consider this:

If a particular position could be performed by someone other than a minister, but the minister’s

education and experience contribute significantly to the performance, this should be clearly stated in a written job description or employment agreement. Then the minister can be treated as “in ministry.”

If a minister does not regularly and significantly engage in sacerdotal functions or conduct worship or teach or hold administrative positions in the religious organization, the minister’s employer should not declare a housing allowance for the minister. If it does, it may incur tax penalties or other liabilities.

1.200: Employee or Self-Employed

1.205: Introduction

The Internal Revenue Code is clear that regardless of whether a minister is an employee or an independent contractor, a minister is treated as self-employed for income tax withholding, Social Security and Medicare tax. The Internal Revenue Code does not state the employment status of ministers but contemplates that ministers may fall into either category for income tax purposes. The IRS bases the determination of whether an individual is an employee or self-employed (independent contractor) on common-law rules. IRS Publication 517, “Social Security and Other Information for Members of the Clergy and Religious Workers,” discusses the distinction between an employed and a self-employed minister and provides an example of how an employed minister should report his/her earnings and deductions on Form 1040. IRS Publication 517 shows the use of a Form W-2, “Wage and Tax Statement,” as the method for reporting compensation by the organization to a minister who is an employee.

1.210: The Common-Law Rule

The common-law rule defining a person’s employment status can be stated as follows:

The relationship of an employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished.

That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed, it is sufficient that he/she has the right to do so.

1.215: Ministers as Employees

The ministers of The Lutheran Church—Missouri Synod should be regarded as employees for tax purposes and be given Form W-2 based on their working relationship with their churches or other employers and their use of tax-sheltered annuities and cafeteria plans.

In Revenue Ruling 87-41, the IRS has issued guidelines to determine whether a worker is an employee or self-employed. Based on those guidelines, synodical parish pastors and all administrative and teaching personnel within the Synod and its colleges, seminaries, congregations and schools are regarded as common-law employees of their payers of salaries, not as engaged in an independent trade or business (see 7.105).

1.300: Income, Social Security and Medicare Taxes

1.305: Reporting Wages

The minister’s salary must be reported on Form W-2, “Wage and Tax Statement,” in Box 1 titled, “Wages, tips, other compensation.” Form W-2 should be provided to minister no later than January 31 following the calendar year in which the compensation was paid. Housing allowance should not be reported as wages here. The housing allowance and/or fair rental value of a parsonage and church-paid utilities should be reported on Form W-2 in Box 14 or on a separate statement. (For greater detail, see 2.800.) All other allowances — auto or Social Security — paid to the minister may be reportable as compensation in Box 1 on Form W-2.

Group term life insurance premium for coverage in excess of \$50,000 must also be reported on Form W-2. (For greater detail, see 4.515.)

The employer’s payments to a 403(b) tax-sheltered annuity (TSA) are not to be included in the box for wages, tips and other compensation. “Employer’s payments” include amounts represented by salary reduction (Rev. Ruling 68-395). For clarification, the employer should provide the minister with a detail of the items reported on Form W-2.

See Chapter 5 for more information, in general, related to TSAs, and Chapter 4 for details related to the Concordia Retirement Savings Plan (CRSP), a specific 403(b) plan available to employees of employers participating in The Church’s Plan.

**Items to Include/Exclude on Form W-2
in the Box "Wages, tips, other compensation."
See Exhibit 7-K(2)**

Include	Exclude
<ul style="list-style-type: none"> • Salary • Auto allowance (no accounting) • Social Security allowance • Other cash expense allowance (nonaccountable) • Group term life insurance premium for coverage in excess of \$50,000 • Moving expense payments • Tangible and intangible gifts 	<ul style="list-style-type: none"> • Housing allowance • Tax-sheltered annuity payments • Accountable expense reimbursements • Cafeteria Plan deductions

1.310: Forgiveness of Debt

Sometimes a congregation, as part of a minister's compensation package, provides him/her a loan (typically for a down payment on a home) and forgives a portion of the loan annually. The portion forgiven should be treated as compensation and reported on his/her Form W-2. If this "income" is used to provide housing debt retirement, the minister may include it as expenses to provide a home when determining how much of his/her housing allowance was used.

If the evidence to secure repayment of such a loan is not made with meticulous care, the IRS could claim that it was not a loan at all, but compensation, and tax the entire amount in the year the money was "loaned." Compensating loans may also trigger the complicated rules that apply to nonqualified deferred compensation under section 409A of the tax code. Competent advice should be sought in connection with making loans that are planned to be forgiven later.

An arrangement by which no interest is charged or the rate is below market can result in taxable income on the difference between the applicable market rate and the rate actually charged except when special conditions are met regarding employee relocation loans. Competent advice should be obtained in connection with any loan for no interest or for low interest.

1.315: Gift Versus Compensation

At Christmas, retirement and anniversary of ordination, congregations often give their ministers gifts of money, trips (such as to the Holy Land) or other tangible gifts. All tangible and intangible gifts to an employee, including the minister, which have been either purchased or paid directly from the congregational treasury or solicited

from individual members in an organized manner (e.g., door collection), is taxable compensation and should be included on Form W-2 unless given for length-of-service (described below). Intangible gifts include cash, gift cards, gift coupons, gift certificates (other than arrangements conferring only the right to select and receive tangible personal property from a limited array of such items selected or pre-approved by the employer), vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, and other similar items.

Tangible gifts given to employees **for length-of-service** (including retirement) are nontaxable only if the following conditions are met: the award is presented ceremoniously; the employee has completed at least five years of service and was awarded no more frequently than once every five years; and the gift's fair market value (as opposed to the employer's actual cost) falls within certain IRS-prescribed limits. The dollar limitations vary depending on whether or not a qualified awards plan has been adopted by the congregation. To be "qualified," it must be an established written plan that does not disproportionately favor highly compensated employees.

A qualified plan award is tax-free up to \$1,600 per person providing the average cost of all noncash awards given to all employees does not exceed \$400 per employee. **Example:** Hope Lutheran Church provided three length-of-service/retirement awards for the year. Pastor Shepherd received a retirement watch worth \$900, Secretary Ms. Smiley received a crystal vase worth \$150, and teacher Mr. Brainerd received a clock worth \$150. The total awards for the year totaled \$1,200. $\$1,200 \div 3$ (employees) = \$400 average per employee. Since the average value of these awards did not exceed the \$400 average limitation, none of them are reported as taxable compensation on IRS Forms W-2 (IRC Sect. 274 [j]).

All nonqualified plan awards may be tax-free up to \$400 per employee per year. If Pastor Shepherd's watch was worth \$1,500 in the above example, the limitation of "\$400 average per employee" would have been exceeded, thereby making all the awards nonqualified. Accordingly, Hope Lutheran Church had to report \$1,100 of Pastor Shepherd's gift as taxable compensation on his IRS Form W-2.

Some congregations "gift" their **volunteers** with cash or gift cards. If an aggregate amount of \$600 or more is gifted to a volunteer in a single year, this amount must be reported as taxable nonemployee compensation to IRS on Form 1099-MISC (Follow the same process described at 7.465).

Gifts made privately to any church employee from individual congregation members are not deductible as charitable contributions; neither are they taxable income to the employee.

1.320: Reporting Other Compensation

How a minister reports other income on his/her tax return depends on the nature of the income. Salary

received in service as a minister and reported to him/her on Form W-2 should be reported on Form 1040. "US Individual Income Tax Return"; as "Wages, salaries, tips, etc." Any housing allowance received in excess of the minister's actual excludible amount should be included with wages reported on Form 1040, line 7 and listed as "Excess Housing Allowance." (See IRS Publication 517 for an example of how this should appear.) Honoraria received as income for officiating at services, fees for weddings, providing music, writing articles, giving lectures/speeches or for radio or television appearances are taxable income and should be reported on Schedule C, "Profit or Loss from Business."

1.325: Social Security and Medicare Taxes

The minister of the Gospel is subject to self-employment tax (SECA), and the minister is responsible for these taxes. (See 1.340.)

Items the Minister Should Consider in Determining His/Her Self-Employment Income for Schedule SE (Rev Rul 80-110)	
Included in Income	Deductions from Income
<ul style="list-style-type: none"> Gross salary Housing allowance or fair rental value of parsonage Group term life insurance premium for coverage in excess of \$50,000 Schedule C income (e.g. honoraria for weddings, etc.) Auto & expense allowances (if no accounting is made to the employer) Social Security allowance 	<ul style="list-style-type: none"> TSA payments Unreimbursed auto expenses Unreimbursed business expenses Unreimbursed job-related moving expenses Schedule C expenses Cafeteria Plan deductions Professional expenses

IRS Revenue Ruling 80-110 clarifies there is no requirement in the tax code that stipulates only expenses qualifying for an income tax deduction reduce self-employment earnings.

1.330: Self-Employment Tax

Self-employment tax is paid quarterly (April 15–June 15– Sept. 15–Jan. 15) by the minister as an estimated tax deposit or through a voluntary withholding arrangement. It is generally included and paid along with the minister's estimated income tax (see 1.340). The final reporting of the self-employment tax is made on Schedule SE, "Self-Employment Tax," filed with the taxpayer's income tax return. Schedule SE does not compute the income and deductions to arrive at the net earnings subject to the tax,

so that computation must be prepared separately by the minister and attached to Schedule SE.

The fair rental value of living quarters provided to a minister as a parsonage or teacherage, or the cash rental or housing allowance paid to the minister, **must be included in figuring net earnings for purposes of paying self-employment tax**, even though they are exempt from income tax. **Amounts paid into tax-sheltered annuities are not included for purposes of self-employment tax. Allowable business expenses (for an explanation refer to Chapter 6), whether or not deducted for federal income tax purposes, are subtracted for self-employment tax. This would include unreimbursed qualified moving expenses.** All honoraria for performing weddings, guest preaching or officiating at funerals or other services, less expenses, also are included in calculating the self-employment tax.

Voluntary payroll withholding arrangements should include the liability for self-employment tax. (See 1.915 4[a].)

1.335: Self-Employment Tax Rate

In determining self-employment tax liability, earnings from self-employment include those items identified in section 1.325. Self-employment earnings are reduced by 7.65 percent (or in other words, 92.35 percent of total self-employment earnings) before calculating the 15.3 percent tax liability.

In addition, a portion (approximately one-half) of the self-employment tax liability is deducted as an adjustment to gross income on the individual's tax Form 1040. Further information is in **IRS Publication 505, "Tax Withholding and Estimated Tax."**

Taxable Self-Employed		
Year	Rate	Wage Base
2018 (S.S.)	12.4%	wages up to \$128,400
2019 (S.S.)	12.4%	not available (contact local SSA office)
2018/2019 (Medicare)	2.9%	wages up to \$200,000 for single filers and \$250,000 for joint filers
	3.8%	wages above \$200,000 for singles filers and \$250,000 for joint filers

(Continued on page 1-8.)

**1.345:
Estimated Taxes Worksheet**

**Estimated Taxes
Worksheet 20__**

Note: This worksheet is designed merely to estimate your tax liability for withholding purposes, not to calculate your actual tax.

Self-employment tax computation:

Salary (Including Housing Allowance, excluding TSA contributions)		\$ _____ (1)
Other earned net income (guest preaching, etc.)		\$ _____ (2)
	Total Income	\$ _____ (3)
Subtract:		
Unreimbursed employee expenses		\$ _____ (4)
Total self-employment income (line 3 minus line 4)		\$ _____ (5)
	Multiplier	x 0.9235
Net self-employment income		\$ _____ (6)
	Self-employment tax rate	x 0.153
Self-employment tax		\$ _____ (7)

Federal income tax computation:

Income		
Salary (exclude Housing Allowance and TSA contributions)	\$ _____ (8)	
Other earned net income	\$ _____ (9)	
Taxable interest, dividends and capital gains	\$ _____ (10)	
Other taxable income	\$ _____ (11)	
	Total income (add lines 8 thru 11)	\$ _____ (12)
Subtract:		
1/2 Self-employment tax (line 7)	\$ _____ (13)	
Deductible IRA contributions	\$ _____ (14)	
Other adjustments (e.g., certain teacher's expenses, educational loan interest)	\$ _____ (15)	
	Total subtractions (add lines 13 thru 15)	\$ _____ (16)
	Adjusted gross income (line 12 minus line 16)	\$ _____ (17)
CHOOSE ONE {	Standard deduction (use applicable table)	\$ _____ (18)
	-or-	
	Estimated Schedule A deductions	\$ _____ (19)
	(enter the greater of lines 19 and 20 on line 21)	\$ _____ (20)
	Taxable income (line 17 minus line 18 and line 21)	\$ _____ (21)
	Tax before nonrefundable credits (calculate using applicable table)	\$ _____ (22)
	Nonrefundable credits (child tax credit, credits for child care, education and low-income taxpayers' TSA and IRA contributions)	\$ _____ (23)
	Tax after nonrefundable credits (line 22 minus line 23; if result is negative, enter "-0-")	\$ _____ (24)
	Refundable credits (earned income credit, additional child tax credit)	\$ _____ (25)
	Federal Income Tax (line 24 minus line 25)	\$ _____ (26)
	Combined estimated tax liability (line 7 plus line 26)	\$ _____ (27)

You can estimate your tax using IRS tax tables; those for 2018 are provided. Since IRS adjusts these tables annually, use caution obtaining current data for your future calculations.

Tables for Estimated Taxes Worksheet

2018 Standard Deduction (line 18)

Filing Status:	Amount:
Single or married filing separately	\$12,000
Married filing jointly or qualifying widow or widower	\$24,000
Head of Household	\$18,000

2018 Personal Exemption (suspended until 2026)

Per Person	\$Null
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2018 Federal Tax Table (line 22)

If 2018 taxable income (line 21) is:

The tax is:

Single Individuals:

Not over \$9,525	10% of taxable income
Over \$9,525 but not over \$38,700	\$952.50 plus 12% of the excess over \$9,525
Over \$38,700 but not over \$82,500	\$4,453.50 plus 22% of the excess over \$38,700

Married filing joint returns:

Not over \$19,050	10% of taxable income
Over \$19,050 but not over \$77,400	\$1,905 plus 12% of the excess over \$19,050
Over \$77,400 but not over \$165,000	\$8,907 plus 22% of the excess over \$77,400

Married filing separate returns:

Not over \$9,525	10% of taxable income
Over \$9,525 but not over \$38,700	\$952.50 plus 12% of the excess over \$9,525
Over \$38,700 but not over \$82,500	\$4,453.50 plus 22% of the excess over \$38,700

Head of Household:

Not over \$13,600	10% of taxable income
Over \$13,600 but not over \$51,800	\$1,360 plus 12% of the excess over \$13,600
Over \$51,800 but not over \$82,500	\$5,944 plus 22% of the excess over \$51,800

2018 Quarterly Payment

(line 27 divided by remaining quarters)

Period	Due	Amount (fill-in)
Jan. 1 – March 31	4/17/2018	_____
April 1 – June 30	6/15/2018	_____
July 1 – Sept. 30	9/17/2018	_____
Oct. 1 – Dec. 31	1/15/2019	_____

The information contained in these tables changes annually and is published in IRS Form 1040-ES (www.irs.gov).

1.340:

Declaration of Estimated Taxes

Since the compensation of a minister earned in the exercise of the ministry is specifically excluded in the Internal Revenue Code from mandatory federal income tax withholding, ministers should either pay quarterly installments of estimated tax or mutually agree on voluntary withholding with the employer.

The minister must determine whether he or she has an obligation to pay quarterly installments. To help them estimate these payments, offer them a copy of the Estimated Taxes Worksheet (see 1.345). The minister should obtain from the IRS a current Form 1040-ES, "Estimated Tax for Individuals," (containing payment vouchers) to remit the payments. Alternatively, the minister can pay his or her taxes online at *eftps.gov*, "Electronic Federal Tax Payment System." The IRS does not send out notices of taxes due.

Quarterly payments are due as follows:

<u>For the period</u>	<u>Due date*</u>
Jan. 1–March 31	April 15
April 1–June 30	June 15
July 1–Sept. 30	Sept. 15
Oct. 1–Dec. 31	Jan. 15

(*Due dates falling on a Saturday, Sunday or legal holiday may be extended to the next business day.)

If changes in income or deductions revise the original estimate, the estimate may be adjusted on the next installment of estimated tax or may be paid more immediately with an extra installment between quarters.

A "substantial" understatement of estimated tax could result in a penalty for underpayment.

1.350:

Voluntary Withholding for Ministers

If both the congregation and the minister agree, the congregation may withhold and remit taxes on behalf of the minister. A copy of a letter from the IRS dealing with the procedure to be followed to effect "voluntary withholding" is found in 1.915. An example of voluntary withholding and reporting on Form W-2 is found in Exhibit 7-K(3).

1.360:

Exemption from Self-Employment Tax The Lutheran Church—Missouri Synod does not oppose participation by its ministers in Social Security on the basis of religious principles.

Conventions of the Synod have enacted resolutions encouraging participation in Social Security, implying that, as a church body that ordains and commissions ministers, it does not recognize a theological basis for opposing participation in Social Security. For more information, see Treas. Reg. 1.1402(e)-2A.

The minister's filing of an exemption from the Social Security tax (IRS FORM 4361) does not affect the congregation's requirement to participate in Social Security for its lay employees.

1.370:

Taxes and Ministers/2018 Edition

A brochure designed for ordained or commissioned ministers of The Lutheran Church—Missouri Synod can be obtained from your district office. It can also be viewed or downloaded from *lcms.org/resources/church-and-school-administration*.

1.400:

Employment of Retired Ministers of the Gospel

1.405:

Introduction

From time to time, congregations have the opportunity to employ retired ordained or commissioned ministers. Wage and tax matters relating to such workers are dependent on a number of factors including age and Social Security status.

1.410:

Allowable Earnings Under Social Security

Retired workers under full retirement age who are receiving Social Security may earn up to \$17,040 (in 2018) without realizing any reduction in their Social Security benefits. A \$1 reduction is made for every \$2 of income in excess of this limit. In the year a retiree reaches full retirement age, a \$45,360/yr limit applies, however, only to the income earned in the months prior to the individual's birth month. One dollar in benefits will be withheld for every \$3 in earnings above this limit. Starting with the month that a working retiree reaches full retirement age, he or she can receive full benefits with no limit on earnings.

For more information about how earnings in retirement may affect Social Security benefits, call 800-772-1213 and order SSN Publication No. 05-10069 "How Work Affects Your Benefits" or visit *ssa.gov/pubs/*.

1.415:

Other Income

Funds received by the worker such as honoraria are accounted for by the worker in his or her income tax filing.

1.420: Taxes

Earnings by retired ministers, including those receiving Social Security benefits, are subject to income and self-employment tax. Treasurers are required to provide a Form W-2 to these workers and report these payments on Form 941, "Employer's Quarterly Federal Tax Return".

1.425:

Housing Allowance

Retired ordained or commissioned ministers who were eligible for housing allowance before retirement continue to be eligible to designate a portion of their salary as housing allowance if working in the exercise of ministry. Since these retired workers noted above generally have 100 percent of their retirement benefits under Concordia Retirement Plan designated as housing allowance, confer with the worker regarding any additional housing allowance needed (see 4.545 for details). Housing allowance designations must meet the criteria explained in Chapter 2 of this manual.

The portion of a retiree's earnings received for conducting activities in the exercise of his or her ministry (for example, part-time ministry) that is designated as housing allowance is subject to self-employment tax. It must also be counted in terms of allowable earnings under Social Security. (See 1.410.) However, self-employment tax does not apply to the rental value of any parsonage or pension payments designated as housing allowance received by the minister from a church plan (Concordia Retirement Plan, Pension Plan for Pastors and Teachers, Retiree Medical Supplement) after the minister retires.

1.900: IRS Rulings

Provided for your reference and use when necessary are copies of three very important IRS rulings (Sec. 1.905, 1.910, 1.920), each of which in common have determined that LCMS commissioned ministers who teach in an LCMS school are eligible for the housing allowance exclusion under IRC Sec. 107 because they are authorized to perform substantially all ministerial duties within the scope of the tenets and practices of the LCMS.

In Sec. 1.915, the IRS provides guidelines concerning how to report a minister's wages when a voluntary tax withholding agreement is entered between the minister and his or her employer.

1.905: Male Teachers Entitled to Tax-Free Housing

RULING OF THE COMMISSIONER OF INTERNAL REVENUE IN THE ELDOR N. EGGEN CASE

Office of COMMISSIONER OF INTERNAL REVENUE

Refer to: IT:P:TR:SAH-I

(Stamped Date)
Sept. 26, 1950

Mr. Fred L. Kuhlmann
c/o Lowenhaupt, Waite, Chasnoff and Stolar
408 Olive Street
St. Louis 2, Missouri

Dear Mr. Kuhlmann:

Reference is made to your letter and brief of May 15, 1950, submitted on behalf of Mr. Eldor N. Eggen and The Lutheran Church—Missouri Synod. The question under consideration relates to the taxability, for federal income tax purposes, of the value of living quarters furnished to Mr. Eggen, a teacher in a parochial school of The Lutheran Church—Missouri Synod. Since the question has as its basis the status of Mr. Eggen with respect to whether he is to be considered as a "minister of the Gospel" for federal income tax purposes, and since the question affects other persons occupying similar positions, The Lutheran Church—Missouri Synod, hereinafter referred to as the Lutheran Church, intervened in the case.

It is the position of Mr. Eggen and representatives of the Lutheran Church that the value of living quarters furnished to teachers of the parochial schools of the Lutheran Church does not constitute taxable income to the teachers because of the provisions of Section 22(b)(6) of the Internal Revenue Code which provides that the rental value of a dwelling house and appurtenances thereof furnished to a minister of the Gospel as a part of his compensation shall not be included in gross income and shall be exempt from taxation.

The Lutheran Church consists of local Lutheran congregations which are sovereign, self-governing bodies. The Lutheran pastor and the Lutheran teacher only are charged with the public ministry within a particular congregation. Such congregations have united themselves in a voluntary Synodical organization. No layman as such may hold membership in the Synod. Membership in the Synod is held by congregations, pastors, and teachers. Therefore, by official regulation of the Church the teacher is classified with the pastor in the matter of membership in the Synod.

It is stated that the term "teacher" arises from the fact that these men are employed to teach in the elementary, secondary, and higher schools established, maintained, and conducted by the Lutheran Church, and that the term "teacher" is in a sense a misnomer as it implies that these men are in the same category as teachers of public or private schools. It is pointed out that according to the doctrine of the Lutheran Church, only those who have been specially "called" by the congregation may publicly exercise the rights of preaching, teaching, and performing other functions of the public ministry. Elders, deacons, Sunday school teachers, and others participate in church work, but the special "call" into the public ministry of the Lutheran Church is reserved for only two classes of men, the pastors and teachers.

The Lutheran Church maintains a system of ten preparatory schools, two seminaries for the training of its pastors and two teachers' colleges for the training of its teachers. The students who attend the preparatory schools may enter either the seminaries and become Lutheran pastors or the teachers' colleges and become Lutheran teachers. The curriculum of the teachers' colleges centers around courses in religion which is at the core of and permeates the entire course of study. There are thirteen courses on religious subjects, eight of which

are required and five of which are elective. It is contended that the Lutheran teacher's training is such that it qualifies him as a minister of the Gospel. The Lutheran parish schools integrate religious education with the entire school life, curricular and extra-curricular, and the work of the teacher is regarded as part of the ministry of the church. Financial assistance is offered to students in the teachers' colleges.

At the time a young man is trying to determine whether or not to become a Lutheran teacher emphasis is placed on the service he is to render to God in the profession, and it is made clear that his chief compensation will not be the financial remuneration but the satisfaction of serving the Lord. It is pointed out to him that as a Lutheran teacher he has a heavy responsibility as a servant of the Church. The office of the Lutheran teacher is said to be a lifework and the average term of office about thirty-five years.

A "call" is issued by a particular congregation or other authorized body requiring the services of a pastor or teacher. The "call" is not merely an appointment to a secular position; it involves an election by the congregation.

A "call" is never issued to laymen or to women, and may be issued only to such servants of the church as have been specially trained and officially approved by the Synod as pastors or teachers. If the Lutheran teacher accepts the "call" he is then installed by the congregation which issued it. Both teachers and pastors are installed, the only difference being that the initial installation of a pastor is called an ordination. The teacher's first installation is essentially the equivalent of an ordination in that it is a formal, solemn confirmation of the teacher's "call" as a lifelong servant of the Church—a consecration or setting aside of such person for lifelong service. By reason of his "call" the teacher shares with the pastor the performance of the public ministry in the Lutheran Church. In the exercise of the functions of the public ministry, the Lutheran pastor and teacher are on an equality as ministers of the Gospel.

A very important and significant factor is that a Lutheran teacher may be authorized by the congregation to perform and often does perform any or all of the following ministerial duties: confirmation instruction, preaching and conducting church services, baptizing infants or adults, administration of Holy Communion, visiting the sick, spiritual guidance of Church organizations, spiritual counsel, mission work, funeral services, and Church discipline. It is a matter of custom and not of doctrinal prohibition that Lutheran teachers do not conduct marriage ceremonies.

Like that of a pastor, the "call" of the teacher is for life. If a teacher or a pastor deserts his vocation for invalid reasons or disqualifies himself in any manner, he is declared "ineligible for another call" and officially removed from the Synodical roster of ministers of the Church by the Synod.

Lutheran teachers along with the pastors participate in the pension plan operated by the Church.

As is pointed out in the brief filed by the taxpayer, neither Section 22(b)(6) of the Internal Revenue Code nor the regulations prescribed pursuant thereto provide a definition of the term "minister of the Gospel" or furnish any standards to be used in determining who is to be classified as a "minister of the Gospel." Section 22(b)(6) of the Internal Revenue Code was first enacted into law by the Revenue Act of 1921. Nothing appears in the House or Senate Committee reports of that time to set forth more particularly who or what class of persons are to be included within the term "minister of the Gospel."

In view of the foregoing, it appears that teaching in a Lutheran parochial school is a function of the public ministry in the Lutheran Church and that a Lutheran teacher has the status of a minister of the Gospel within the Lutheran Church. It further appears that a Lutheran teacher is subject to the same rules and regulations as a pastor with respect to call, installation, discipline, and retirement and performs the same functions as a pastor insofar as the congregation which he serves sees fit to authorize him, and enjoys, as does the pastor, membership in the Synod. It is held, therefore, that Mr. Eggen is a minister of the Gospel within the purview of Section 22(b)(6) of the Internal Revenue Code. Accordingly, the rental value of living quarters furnished Mr. Eggen is not includible in the gross income of Mr. Eggen for federal income tax purposes.

The conclusions reached herein are applicable only to the teachers of The Lutheran Church—Missouri Synod, the conclusions being based on the particular facts presented with respect to teachers of the organization.

Very truly yours,
(Signed)
C. W. Stowe
Acting Deputy Commissioner

**1.910:
Male Teachers as “Ministers of the Gospel”**

May 1, 1964

District Director
Indianapolis, Indiana
National Office—Internal Revenue Service

A. R. Manske
Fort Wayne, Indiana

This is in reply to your request for technical advice with respect to the exclusion of a rental allowance, by the subject taxpayer, under Section 107 of the Internal Revenue Code of 1954.

Mr. Fred L. Kuhlmann, the taxpayer’s representative, was granted a hearing in the National Office on March 4, 1964. Revenue Agent R. A. Englebright of your office was also present at the hearing.

The facts are understood to be as follows:

Mr. Manske is a principal at Bethlehem Lutheran School in Fort Wayne, Indiana.

He was educated at Concordia Teachers College at River Forest, where he received his B. S. degree in 1948. Upon his graduation, he was assigned by Synod’s Board of Assignment to Bethlehem Lutheran Church which had issued a formal call to the board for a teacher. He has remained at Bethlehem Lutheran Church throughout his career as a teaching minister.

It is stated in the memorandum of law submitted by Mr. Kuhlmann that as a teacher of the congregation Mr. Manske is subject to the same requirements and provisions as is the pastor. Every male teacher who is trained in the Lutheran School System to be a parochial school teacher is solemnly installed by the congregation where he is first assigned to teach. Teaching in the Lutheran Church is considered a sacerdotal function and the male teachers are recognized by the Lutheran Church as ministers of the gospel. This recognition has evolved from an earlier practice where the teaching was performed by the pastor. Within the Lutheran Church, the male teacher and the pastor are given special recognition. No other members of the church occupy equal status with these two individuals.

Section 107 of the 1954 Internal Revenue Code provides for an exclusion of a rental allowance by a minister of the gospel to the extent used by him to rent or provide a home.

Section 1.107-1 of the regulations provides that the rental allowance must be paid as compensation for services which are ordinarily the duties of a minister of the gospel. In general, the rules of Section 1.1402(c)-1(e) are applicable to such determination.

Rev. Rule. 57-107, C.B. 1957-1, 277, holds that male teachers in parochial schools inducted into the teaching ministry as ministers are “duly ordained, commissioned or licensed ministers of a church” within the contemplation of section 1402(c)(4) of the Self-Employment Contribution Act of 1954, and that they are performing services in the exercise of their ministry. Rev. Rule. 62-171, C.B. 1962-2, 39, concludes that this holding is also applicable under Section 107 of the Internal Revenue Code.

Accordingly, based on the foregoing, it is our conclusion that the taxpayer in the instant case qualifies as a minister of the gospel for purposes of Section 107 and his services as a principal in the Lutheran parochial school are services within the exercise of his ministry.

1.915: Voluntary Withholding

District Director
St. Louis, Mo.
Internal Revenue Service

Date: Feb. 9, 1973

In reply refer to: AU:F:3:31:WW

Mr. Philip E. Draheim
515 Olive St.
Suite 1700
St. Louis, MO 63101

Dear Sir:

This is in reply to your request for a determination as to the proper method to be employed to effect income tax withholding at source on wages paid to ministers and clergymen.

According to applicable law and regulations currently in effect, the following procedures are necessary to properly implement voluntary withholding of income tax which may be of an amount sufficient to satisfy the expected liability for self-employment taxes or other amounts:

- 1) An employer and an employee may enter into an agreement to provide for the withholding of income tax with respect to amounts which are includible in the gross income of the employee under Section 61 of the Internal Revenue Code and must be applicable to all such amounts paid by the employer to the employee.
- 2) The minister must furnish his employer with a properly executed Form W-4. The furnishing of the Form W-4 shall constitute a request for withholding. The acceptance of Form W-4, the beginning of withholding, and the signing of the Form W-4 by the employer shall constitute agreement on the part of the employer. Note: Form W-4 must be signed by both the employer and the employee.
- 3) Amounts to be withheld shall be based upon information on Form W-4 and determined under rules contained in Section 3402 and applicable regulations.
- 4) This agreement may be effective only for the withholding of income tax.
 - a) Additional withholding may be requested for amounts over and above the regular withholding rates. This additional amount will be set forth in item 8, Form W-4 (Rev. Dec. 1971)¹, and, in the event of a clergyman, may be of an amount sufficient to cover the anticipated liability for self-employment tax.
- 5) The employer must report the above-noted withheld tax on Form 941 (quarterly) in accordance with applicable provisions of law and regulations. Currently, Form 941 (Rev. July, 1972)² provides that this withheld tax be reported on lines 10 through 13.

In reply to your other questions, we submit the following:

- 1) A minister or clergyman is required to file Schedule SE (Form 1040) with his annual federal income tax return if he has elected coverage by filing Form 2031 (Waiver Certificate to Elect Social Security Coverage for Use by Ministers, Certain Members of Religious Orders, and Christian Science Practitioners) with the I.R.S. within prescribed time limits. Also, automatic coverage was extended to all ministerial services for all taxable years after 1967 unless a clergyman had been granted an exemption from such coverage.
- 2) Amounts listed in item 103 of Form 941 shall not include that part of a clergymen's compensation designated as a "parsonage allowance" which is not includible in his gross income by reason of application of law and regulations under Section 107 of the Internal Revenue Code.

This is a determination letter as defined in Revenue Procedure 72-3, Internal Revenue Bulletin 1072-1.

Very truly yours,
A. W. McCanless
District Director

¹ Rev. Jan. 2009 - Line 6

² Rev. Jan. 2009 - Line 3

³ Rev. Jan. 2009 - Line 2

1.920:

Female Teachers

The following is the IRS private letter ruling #PLR 92-21025 concerning Female Commissioned Ministers.

Internal Revenue Service

Department of the Treasury

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Person to Contact:
Marie Cashman

Telephone Number:
(202) 566-4747

Refer Reply to:
CC:EE:2 - 31-2152-91

Date: **FEB 20 1992**

Index No.: 0107.00-00

The Lutheran Church-Missouri Synod
1333 S. Kirkwood Road
St. Louis, MO 63122

Key: Commissioned Minister = Female Commissioned
Minister(s)
X = The Lutheran Church-Missouri
Synod

Dear Sir or Madam:

This is in response to a request for a ruling submitted by your authorized representative that X's Commissioned Ministers are entitled to the exclusion from gross income provided by section 107 of the Internal Revenue Code (Code). Rulings are also requested that the services Commissioned Ministers perform are in the exercise of their ministry for purposes of section 1402, 3121, 3309 and 3401.

X is a well established religion of more than 5900 congregations located throughout the United States. Approximately 17,000 ministers perform services for X including the Commissioned Ministers, whom X regards as essential to its religious mission under its beliefs, traditions, and practices.

Generally, a candidate to be a Commissioned Minister completes four years of study at a college operated by X where the curriculum centers around courses in religion. Upon completion of the required education, the college faculty, on behalf of X, certifies that the candidate is fit for the position of Commissioned Minister. The certificate of fitness assures that the candidates are academically, theologically and morally fit to have the status and authority of Commissioned Minister. The certified candidate is then "called" by a congregation, and after accepting the call, the candidate is installed as a Commissioned Minister in a formal ceremony. Occasionally an individual may become a Commissioned Minister through a "colloquy", which requires the candidate to have achieved equivalent academic, religious, educational, and personal life qualifications. In addition, a colloquy candidate must pass oral and written examinations.

Commissioned Ministers serve God and X by performing full-time public ministry functions including: classroom teaching; evangelizing; counseling individuals; leading Bible study groups, devotions, worship services for youth and a congregations's music

The Lutheran Church-Missouri Synod

ministry; giving the children's sermon at the regular Sunday worship service; addressing the congregation in a worship service on a subject in which the Commissioned Minister has expertise; coordinating lay church workers; administering or guiding a congregations's youth ministry; coordinating family ministry events; participating in ministries to those with special needs; and caring spiritually for the sick and imprisoned and their families. X regards teaching of the faith to the children and youth of the flock as a major duty of the pastoral office. Upon acceptance of a call and installation into a ministry position, a Commissioned Minister becomes a "member" of X.

You have represented that the majority of Commissioned Ministers are called directly by an individual church to serve in the church's parochial school. The schools, for the most part are not separate organizations from the churches. However, some of the schools are incorporated separately from a member congregation, and you have represented that each such school is an integral agency of a member congregation. A Commissioned Minister also may be called by a congregation to be a deaconess or Director of Christian Education.

Generally, an ordained minister of X officiates in the public administration of the sacraments and leads the public worship. In certain situations, a Commissioned Minister may lead the liturgy in prayer, read the Scriptures in a church service or perform a baptism. Under the doctrine of X, baptism is a sacrament.

Section 107 of the Code provides that in the case of a minister of the gospel, gross income does not include the rental value of a home furnished to the minister as a part of the minister's compensation or the rental allowance paid to the minister as part of the minister's compensation, to the extent used by the minister to rent or provide a home.

Sections 1402, 3121, and 3401 of the Code, which provide definitions for purposes of the Self-Employment Contributions Act, Federal Insurance Contributions Act and income tax withholding respectively, refer to services performed by a "duly ordained, commissioned, or licensed minister" of a church in the exercise of his ministry. Section 3309, relating to the Federal Unemployment Tax Act, contains similar language.

Section 1.107-1(a) of the Income Tax Regulations provides that in order to qualify for the exclusion provided by section 107, the home or rental allowance must be provided as remuneration for services which are ordinarily the duties of a minister of the gospel. In general, the rules provided in regulation section 1.1402(c)-5 apply to such determination.

The Lutheran Church-Missouri Synod

Section 1.107-1(a) also provides that examples of specific services which will be considered duties of a minister for purposes of section 107 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 functions at theological seminaries.

Section 1.1402(c)-5(a)(2) of the regulations provides that a "duly ordained, commissioned, or licensed minister" of a church is engaged in carrying on a trade or business with respect to service performed by him in the exercise of his ministry or in the exercise of duties required by a religious order unless an exemption under section 1402(e) is effective.

Section 1.1402(c)-5(b)(2) of the regulations provides that service performed by a minister in the exercise of his ministry includes the ministration of sacerdotal functions; 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. Section 1.1402(c)-5(b)(2)(i) provides that whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting the minister's church or church denomination. Sections 31.3121(b)(8)-1 and 31.3401(a)(9)-1 of the Employment Tax Regulations contain similar provisions.

If a church or church denomination ordains some ministers of the gospel and licenses or commissions other ministers, the licensed or commissioned minister must perform substantially all the religious functions within the scope of the tenets and practices of his religious denomination to be treated as a "minister of the gospel" under section 107 of the Code. Rev.Rul. 78-301, 1978-2 C.B. 103.

In Wingo v. Commissioner, 89 TC 922 (1989), the issue was whether the taxpayer was performing services as a "duly ordained, commissioned or licensed minister" for purposes of the self-employment tax exemption under sections 1402(c) and 1402(e) of the Code. In 1980, the taxpayer became a probationary member of the North Arkansas Annual Conference of the United Methodist Church (the Conference), an ordained deacon of that denomination and a licensed local pastor of a church of that denomination. As such, he administered the Sacraments of Baptism and the Lord's Supper to members of his congregation, conducted worship and other religious services for his local church, and performed services in the control, conduct and maintenance of his local

The Lutheran Church-Missouri Synod

church and the Conference. The court held that the taxpayer was a "duly ordained, commissioned, or licensed minister" within the meaning of section 1402 when he assumed the duties and functions a minister in 1980.

In determining whether the taxpayer was a "duly ordained, commissioned, or licensed minister" the court examined whether taxpayer performed the duties and functions of a minister within the three types of ministerial services under section 1.1402(c)-5(b)(2) of the regulations and also considered whether the taxpayer actually was ordained, commissioned, or licensed, and whether his church considered him to be a religious leader.

The court held that the taxpayer was a minister for purposes of section 1402(c) of the Code because he satisfied all the elements of section 1.1402(c)-5(b)(2) of the regulations. First, as a local pastor and an ordained deacon he administered the sacraments. He satisfied the second prong, conducting religious worship, when he served as the local pastor of church. The court also held that he satisfied the third prong (control, conduct, and maintenance of the church or religious organizations within the church) because he was in charge of all the organizational concerns of his own congregation, including administering the provisions of the church discipline, supervising the working program of the local church, maintaining church records and meeting local financial obligations. The court noted that a church's designation of a person as a minister standing alone, is insufficient to determine whether he is a minister for self-employment tax purposes; however, it is an additional factor to consider. The court concluded that when a person performs all the three types of services set forth in the regulations and is recognized as a minister or religious leader by his denomination, as here, that person is a minister for purposes of section 1402(c). Thus, taxpayer's status as a probationary member of the Conference did not prevent him from being a minister for purposes of section 1402(c).

Under the test applied in Wingo and the test set forth in Rev. Rul. 78-301, we conclude in the present case that the services Commissioned Ministers perform are in the exercise of their ministries within the meaning of section 1.1402(c)-5(b)(2) of the regulations. Accordingly, the Commissioned Ministers are performing services as "ministers of the gospel" within the meaning of section 107 of the Code and are eligible to exclude any amounts designated as a housing allowance from their gross income under section 107.

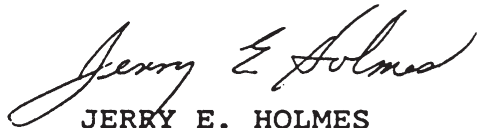
We further conclude that the services Commissioned Ministers perform are in the exercise of their ministry within the meaning of sections 3121, 3401, and 3309 of the Code.

The Lutheran Church-Missouri Synod

No opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,



JERRY E. HOLMES
Chief, Branch 2
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosure:

Copy for 6110 purposes.

cc: F. Vilbig