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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 the Entity a religious order for the purpose of claiming the clergy residence deduction pursuant to paragraph 8(1)(c) of the Act?
2) If the response to 1) is yes, then do certain individuals employed in the above-mentioned organization satisfy the function test by virtue of being exclusively in full-time administrative service by appointment of a religious order?

POSITION: 1) No.
2) General comments provided.

REASONS: 1) The organization does not satisfy all the six conditions necessary for the purpose of qualifying as a religious order.

August 3, 2010

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Clergy Residence Deduction

This is in response to your letter dated May 31, 2010, wherein you requested our views concerning the clergy residence deduction provided in paragraph 8(1)(c) of the Income Tax Act (the "Act").

Specifically, you wanted our views on whether XXXXXXXXXXXX (the "Entity") qualifies as a 'religious order' for the purpose of the clergy residence deduction pursuant to paragraph 8(1)(c) of the Act. You also wanted our comments on whether certain employees (the "Employees") of the Entity can be considered to be engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination or ministering to a diocese, parish, or congregation, for the purpose of claiming a clergy residence deduction.

Our Comments

Generally, to be eligible for the clergy residence deduction, pursuant to paragraph 8(1)(c) of the Act, 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).

1) Status Test - Religious Order

In the given instance, in order to satisfy the status test, the Employees claim to be a member of a religious order. We, therefore, have to determine if the Entity is a religious order for the purpose of the clergy residence deduction pursuant to paragraph 8(1)(c).

With respect to the definition of a religious order, the following explanation is provided in paragraph 8 of the Interpretation Bulletin IT-141R (Consolidated), entitled Clergy Residence Deduction:

"The term "religious order" means a group of people bound by the same religious, moral and social regulations and discipline. A religious order may comprise all the members of an organization or only an identifiable group within that organization. ... Not every religious organization is a religious order. Whether or not an organization or a group of individuals within an organization is a

religious order is a question of fact to be determined on a case-by-case basis. No factor predominates and each must be assigned its proper weight in the context of all the facts."

Judge Bowman has established in *McGorman et al v The Queen* (99 DTC 699 TCC), with respect to the meaning of a "religious order", six criteria to serve as guidelines in determining whether an organization (or a collectivity of persons therein) is a religious order, and the Canada Revenue Agency (the "CRA") has accepted these guidelines as indicated in paragraph 9 of IT-141R. Accordingly, these guidelines can be used to determine whether the Entity is a religious order. The six criteria are:

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. In some cases it may be for life, but this is not essential. It is important that it not be short term, temporary or part-time.
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.
6. There should generally be a sense of communality.

a) The 1st Criterion - Purpose

The purpose of the organization should be primarily religious. It may have other objects within the overall context of that religious purpose such as education, the relief of poverty, or the alleviation of social ills and suffering. A religious order may have objects that go beyond preaching the gospel and prayer and meditation, and extend to works beneficial to humanity such as running hospitals or helping the poor and homeless.

It is our understanding that the mission of the Entity is "XXXXXXXXXX "

In *Zylstra Estate v The Queen*, 94 DTC 6687, Mackay, J. made the following comments when concluding why The Ontario Bible College and Ontario Theological Seminary ("OBC") and the Institute of Christian Studies ("ICS") were not considered a religious order for the purpose of claiming a clergy residence deduction pursuant to paragraph 8(1)(c) :

"There are two principal considerations which lead me to conclude that neither OBC nor ICS is a "religious order" within the intention of paragraph 8(1)(c). The first is that there is no expression of faith or of religious purpose of either institution apart from the educational purpose of each, that would mark the institution, and its members as distinct from the churches or denominations that each serves. That would appear to me, from dictionary definitions and from the testimony particularly of Professor Wiebe, to be a necessary quality of a "religious order". If it were otherwise the order would not be easily distinguishable from other institutions serving the general religious purposes of the churches concerned.

The second consideration is that both OBC and ICS have their primary purposes in education. That is offered with a particular religious emphasis and to serve the denominations which are supportive of them by education and training of persons from those denominations in spiritual and religious life, and for leadership through teaching and example. Those are noble and important purposes, but in my view they are oriented, quite properly for each institution, to education. They are not religious purposes in the sense pursued by a religious order, though some religious orders may also pursue educational purposes as subordinate to their primarily religious purpose of service to their God through worship, prayer and devotion. It was for generally similar reasons that Urie, J. determined a Hutterite community could not be considered a religious order (i.e. because its objects and purposes were not exclusively religious, but also included farming)...

I conclude that neither OBC nor ICS is a religious order within that term as it is used in paragraph 8(1)(c) of the Act...."

In our view, it appears as though the above comments made by Mackay, J. apply in your situation as well. While it may be true that the Entity subscribes to a Statement of Faith, in our view, education rather than religion appears to be the primary purpose of the Entity. Hence, the Entity does not fulfil the first criterion.

We do not have sufficient information to determine whether the Entity satisfies the remaining 5 criteria. However, it is CRA's view that, to be a religious order for the purpose of paragraph 8(1)(c) of the Act, not most, but all the relevant criteria set out by the court should be met. Since the Entity has not met at least one condition, in our view, it is not considered a religious order for the purpose of paragraph 8(1)(c) of the Act. Accordingly, the Employees cannot be considered to have satisfied the status test, for the purpose of the clergy residence deduction, by being a member of a religious order.

It should be noted that in your submission you enquired if the Entity "still qualifies as a religious order". In this regard, please note that in an earlier CRA document, B 6217, dated August 29, 1985 (copy attached), we stated that in our opinion, the Entity would qualify as a religious order. However, our views have changed as a result of the subsequent case law discussed in the preceding paragraphs.

As indicated earlier, in order to claim a clergy residence deduction pursuant to paragraph 8(1)(c) of the Act, it is necessary for an individual to satisfy both the status and function tests. As noted above, in our view, the Employees do not satisfy the status test; therefore, they are not eligible to claim the clergy residence deduction provided for in paragraph 8(1)(c) of the Act.

2) Function Test

While no further analysis is necessary to determine if the Employees are eligible to claim the clergy residence deduction for the purpose of the function test, we offer the following comments on whether certain Employees can be considered to be engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination.

The CRA has interpreted the phrase "administrative service" in paragraph 18 of the IT-141R. Although it is not limited to the senior level of management of an organization, performance of specific staff functions such as accounting, grounds keeping, information technology and clerical work do not qualify as administrative service. IT-141R further explains that the words "exclusively and full-time" imply that the person does not have some other form of appointment, business or occupation that is in addition to, and impinges upon, the administrative work performed.

In the given situation, based on the job descriptions in the submission, we are unable to comment if it qualifies as a position "engaged exclusively in full-time administrative services", for the purpose of the clergy residence deduction.

Paragraph 20 of IT-141R, further, states, that a person's administrative responsibilities must be by appointment of a religious order or a religious denomination. Recommendation or commendation (as distinct from appointment) of a person, for administrative responsibilities with another organization, does not constitute appointment by the order or denomination that makes the recommendation or commendation. The appointment need not be to employment with the denomination or order. The appointment can be to a position with an entity that is controlled by, and that is an integral part of the denomination. It should be in accordance with the practices and procedures of the particular religious organization.

In the given submission, the Employees have indicated on form T1223, entitled Clergy Residence Deduction, that for the purpose of appointment to the Entity, "XXXXXXXXXX"

However, as explained above, in our view, the Entity is not a religious order. Hence, the Employees cannot be considered to be appointed by a religious order for the purpose of the clergy residence deduction.

Further, in the submission, some of the Employees have indicated that they satisfy the function test by virtue of "ministering to a diocese, parish, or congregation". As explained earlier, since the status test was not met, we did not undertake a detailed analysis whether certain Employees can be considered to be 'ministering to, a diocese, parish or congregation' for the purpose of the function test. However, from a quick review of the information provided, the duties described in the submission, do not appear to satisfy that element of the function test.

R.A. Albert, CA
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