

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON**

CRIMINAL ACTION NO. 11-70-DCR

UNITED STATES OF AMERICA

PLAINTIFF

**V. UNITED STATES'S SUPPLEMENTAL BRIEFING REGARDING
PARSONAGE ALLOWANCE AND HOME OFFICE DEDUCTION**

RONALD E. WEINLAND

DEFENDANT

* * * * *

Comes now the United States of America, by and through counsel, and files supplemental authority regarding the issue of whether the Defendant may claim a parsonage allowance under 26 U.S.C. § 107 (which is exempt from income tax) and deduct expenses relating to the portion of his home used as an office during the period at issue in this case. *See* R. 48: Minute Entry for Motion Hearing. This supplemental briefing is made in connection with the Defendant's effort to introduce the testimony of either David or Douglas Schoepf regarding the fair market value of Northern Kentucky office space similar to the office space in the Defendant's home, pursuant to Federal Rule of Evidence 702.

A taxpayer is not allowed to claim a parsonage allowance and a home office allowance where the business expense deductions result in duplications. *See* Internal Revenue Service, *Minister Audit Technique Guide*, Apr. 2009, <http://www.irs.gov/>

businesses/ small/article/0,,id=210018,00.html. The Internal Revenue Service's ("IRS") *Minister Audit Technique Guide* clearly states, "[S]ince the total cost to provide the home is used in computing the exempt housing allowance, home office deductions for taxes, insurance, mortgage interest, etc. would be duplications." *Id.* The IRS further clarifies, "Generally, you cannot deduct expenses that are allocable to tax-exempt income. However, if you receive a tax-exempt parsonage allowance . . . your expenses for mortgage interest and real property taxes are deductible under the normal rules. *No deduction is allowed for other expenses allocable to the tax-exempt allowance.*" Internal Revenue Service, *Instructions for Form 8829: Expenses for Business Use of Your Home*, 2011, <http://www.irs.gov/pub/irs-pdf/i8829.pdf> (emphasis added).

This IRS guidance finds support in Tax Court precedent. In *Deason v. Commissioner*, 41 T.C. 465 (1964), the Tax Court of the United States ruled that Section 265 of the Internal Revenue Code prohibits a deduction for any expense allocable to tax-exempt income. *Deason*, 41 T.C. at 467-68. Although the *Deason* decision involved a minister who received the parsonage allowance who also sought to deduct transportation costs, the principle of the case is widely considered to apply to the home office expenses of a minister. See DAN BUSBY, ZONDERVAN 2010 MINISTER'S TAX AND FINANCIAL GUIDE: FOR 2009 TAX RETURNS 106 (2010) (because the total cost to provide the home is used in computing the exempt housing allowance, home office deductions for taxes, insurance, mortgage interest, and the like are duplications of expenses eligible for exclusion from income for income tax purposes); see also Church of God Benefits Board, Inc., *Home Office Deduction vs. Ministerial Housing Allowance*, Apr. 11, 2012,

<http://benefitsboard.wordpress.com/2012/04/11/home-office-deduction-vs-ministerial-housing-allowance/> (in light of *Deason*, a minister who is receiving a housing allowance should not deduct expenses associated with a home office as business expenses).

Accordingly, the Schoepfs' proposed testimony regarding the fair market value of commercial property similar to the Defendant's home office is irrelevant and will not "assist the trier of fact to understand the evidence or to determine a fact in issue," and therefore must be excluded pursuant to Federal Rules of Evidence 401, 402, and 702.

Assuming, *arguendo*, this Court finds that a minister may claim both a parsonage allowance and deduct duplicate expenses for his home office, the Schoepfs' proposed testimony still must be excluded pursuant Rules 401, 402, and 702. IRS Publication 587 informs the taxpayer how to determine the proper deduction for his home office. *See* Internal Revenue Service, *Business Use of Your Home*, 2011, http://www.irs.gov/publications/p587/ar02.html#en_US_2011_publink1000226317. Publication 587 states:

To find the business percentage, compare the size of the part of your home that you use for business to your whole house. Use the resulting percentage to figure the business part of the expenses for operating your entire home.

You can use any reasonable method to determine the business percentage. The following are two commonly used methods for figuring the percentage.

1. Divide the area (length multiplied by the width) used for business by the total area of your home.
2. If the rooms in your home are all about the same size, you can divide the number of rooms used for business by the total number of rooms in your home.

Id.

Publication 587 then provides the taxpayer with two examples by which to calculate the proper deduction for his home office:

Example 1.

- Your office is 240 square feet (12 feet \times 20 feet).
- Your home is 1,200 square feet.
- Your office is 20% ($240 \div 1,200$) of the total area of your home.
- Your business percentage is 20%.

Example 2.

- You use one room in your home for business.
- Your home has 10 rooms, all about equal size.
- Your office is 10% ($1 \div 10$) of the total area of your home.
- Your business percentage is 10%.

Id. The proper method by which to calculate deductible expenses for the business use of a home is also provided in Part I of IRS Form 8829. Internal Revenue Service, *Form 8829: Expenses for Business Use of Your Home*, 2011, <http://www.irs.gov/pub/irs-pdf/f8829.pdf>. These resources make clear that the fair market value of a hypothetical office the taxpayer may have rented in place of his home office is not a proper consideration in determining deductions for the business use of his home.

Moreover, in his Response to the United States's First Motion In Limine, the Defendant states that the Schoepfs' testimony will be offered to rebut the United States's evidence showing "the Defendant improperly used church funds to pay part of the cost to acquire his current residence." R. 45: Defendant's Response to First Motion In Limine at p. 8. The Defendant likely is referring to a

\$73,000 transfer made from the church's account to his personal account in February 2005, which defense counsel has characterized as a down payment on the Defendant's home in Union, Kentucky. Because a down payment on a home cannot be deducted as a business expense, the Schoepfs' proposed testimony is irrelevant and will not assist the trier of fact.

For the foregoing reasons, the United States respectfully requests that the Court exclude the proposed testimony of David and Douglas Schoepf.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2012 the foregoing was electronically filed through the CM/ECF system, which will send notice of the filing to counsel of record.

s/ Christopher L. Nason
Assistant United States Attorney