

Gross income; members of religious order; outside earnings remitted to order. An attorney, a member of a religious order, who has taken a vow of poverty and is instructed by the order's superiors to obtain employment with a law firm in the state is an agent of the employing firm, not the religious order, and must include the remuneration remitted to the order in gross income and the remuneration is wages subject to the FICA and income tax withholding. A secretary, a member of the same order, who has also taken a vow of poverty and is instructed by the order's superiors to perform services in the business office of the church that supervises the order is an agent of the religious order and is not required to include the remuneration remitted to the order in gross income and the remuneration is not wages subject to the FICA and income tax withholding; however, the remuneration is income to the order and may be subject to the tax imposed by section 511 of the Code. O.D. 119 superseded and Rev. Rul. 76-323 clarified.

'Advice has been requested whether, under the circumstances described below, amounts received as remuneration by a member of a religious order under a vow of poverty from employment outside the order are includible in the member's gross income, for Federal income tax purposes, and subject to taxes imposed by the Federal Insurance Contributions Act and the Collection of Income Tax at Source on Wages (chapters 21 and 24, respectively, subtitle C, Internal Revenue Code of 1954).

'A and B are members of a religious order and, as a condition of membership in the order, have taken vows of poverty by which all claims to earnings from personal industry are renounced and the earnings belong to the order. The vow of poverty is revocable upon leaving the order, but only as to amounts earned by A or B after leaving the order.

'A is licensed as an attorney in State X and was instructed by the superiors of the order to secure employment with a law firm in State S. A secured employment as an associate with a law firm and, as requested by A, the law firm made the salary payments directly to the order. B is a trained and experienced secretary and was instructed by the superiors of the order to accept salaried employment with the local business office of the church that exercises general administrative supervision over the order. B accepted employment in the church's business office and remitted to the order all remuneration received from the church.

Section 61 of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services. In addition, section 1.61-2(c) of the Income Tax Regulations provides that where, pursuant to an agreement or understanding, services are rendered to a person for the benefit of an organization described in section 170(c) and an amount for such services is paid to such

organization by the person to whom the services are rendered, the amount so paid is income to the person performing the services.

'In *Order of St. Benedict of New Jersey v. Steinhauser*, 234 U.S. 640 (1914), a religious order sought to establish its ownership of the personal property of a deceased member. The Supreme Court of the United States held that, where a privilege of withdrawal from the order is reserved to a member, an agreement between a religious order and its members that the gains and acquisitions of members are the common property of the order is enforceable as to the earnings and property acquired by a member prior to withdrawal from the order.

'However, it is a basic principle of Federal income tax law that an assignment or similar transfer of compensation for personal services to another individual or entity is ineffectual to relieve the taxpayer of Federal income tax liability on such compensation, regardless of the motivation behind the transfer. See *Lucas v. Earl*, 281 U.S. 111 (1930); *Helvering v. Horst*, 311 U.S. 112 (1940), 1940-2 C.B. 206; *Helvering v. Eubank*, 311 U.S. 122 (1940), 1940-2 C.B. 209.

'O.D. 119, 1 C.B. 82 (1919), states in its entirety that

A clergyman is not liable for any income tax on the amount received by him during the year from the parish of which he is in charge, provided that he turns over to the religious order of which he is a member, all the money received in excess of his actual living expenses, on account of the vow of poverty which he has taken.

Members of religious orders are subject to tax upon taxable income, if any, received by them individually, but are not subject to tax on income received by them merely as agents of the orders of which they are members.

'The conclusion of O.D. 119 is supported by two principles, the first of which is that a member of a religious order under a vow of poverty is not immune from Federal income tax by reason of such vow, but is subject to Federal income tax to the same extent as any other person on income earned or received individually. Thus, income earned or received by a taxpayer as a principal, and not as an agent, is taxable to the taxpayer. See *Francis E. Kelley*, 62 T.C. 131 (1974), where an individual member of a religious order under a vow of poverty was taxed on amounts received in an individual capacity. The second principle stated in O.D. 119 is that where an agent receives income on behalf of a principal, the income is not taxable to the agent but to the principal.

'Thus, in cases where a member of a religious order receives income as an agent of the order, and, pursuant to a vow of poverty, remits the income to the order, such income is the income of the order and not of the member. In such cases, the tax

imposed by section 511 of the Code may be applicable to the income of the order.

'Section 3121(b)(8)(A) of the Federal Insurance Contributions Act excepts from the term 'employment' service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of the ministry or by a member of a religious order in the exercise of duties required by such order.

'Section 3401(a)(9) of the Code, relating to income tax withholding, excepts from 'wages' remuneration paid for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of the ministry or by a member of a religious order in the exercise of duties required by such order.

'Sections 31.3121(b)(8)-1(d) and 31.3401(a)(9)-1(d) of the Employment Tax Regulations provide that service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member by the order. The nature or extent of such service is immaterial so long as it is a service that the member is directed or required to perform by ecclesiastical superiors.

'Rev. Rul. 76-323, 1976-2 C.B. 18, states, in part, that in order for the employment of a member of a religious order to constitute the exercise of duties required by such order within the meaning of the Employment Tax Regulations, the services performed in such employment must be of the type that are ordinarily the duties of members of the order and must be performed by the member as part of the duties that are required to be exercised for or on behalf of the religious order as its agent.

It also states that ordinarily a religious order is not engaged in the performance of services as a principal where the legal relationship of employer and employee exists between the member and a third party with respect to the performance of such services.

'However, where a member of a religious order is directed to perform services for another agency of the supervising church, or an associated institution, the member will be considered an agent of the order.

In the instant case, A is an employee and agent of the law firm and is not acting as an agent for or on behalf of the religious order in performing legal services for the law firm. In addition, the private practice of law by A for individual clients as an associate of a law firm is not the performance of services of the type ordinarily required by members of the religious order.

Accordingly, for Federal income tax purposes, A is required to include in gross income the entire remuneration paid by the law firm to the extent such remuneration is not excludable from gross income under any provision of the Code. Further, for Federal employment tax purposes, the entire remuneration received by A

from the law firm is subject to the taxes imposed by the Federal Insurance Contributions Act and the Collection of Income Tax at Source on Wages.

'With respect to B, services performed in the business office of the church at the direction of B's ecclesiastical superiors are services performed for another agency of the church as an agent of the religious order.

'Accordingly, for Federal income tax purposes, B is not required to include in gross income remuneration from the church's business office that is remitted to the religious order. Further, for Federal employment tax purposes, the entire remuneration received from the church's business office is not subject to the taxes imposed by the Federal Insurance Contributions Act and the Collection of Income Tax at Source on Wages.

'Rev. Rul. 76-323 is clarified. O.D. 119 is superseded since the conclusion set forth therein is restated under current law in this Revenue Ruling.