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TAX COURT OF NEW JERSEY

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JUDGE

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RE: Chabad of Randolph, Inc.
v. Township of Randolph
Docket No. 006731-2006

Dear Counsel:

This letter constitutes my opinion with respect to the above matter in which plaintiff seeks a parsonage exemption pursuant to N.J.S.A. 54:4-3.6 for its property located at 48 West Hanover Avenue in the Township of Randolph and designated on the Township Tax Map as Block 166, Lot 1.01 (the "subject property"). As of the assessment date for tax year 2006, that is, October 1, 2005, plaintiff was the owner of the subject property which was occupied by Rabbi Abraham Bekhor and his family. For the reasons set forth below, I hold that the property qualified for the parsonage exemption.

I make the following factual findings based on the proofs at trial and my evaluation of the credibility of the witnesses, particularly Rabbi Bekhor.

Plaintiff has provided a variety of religious services to the Jewish community including worship services, Hebrew School, and adult education. As of October 1, 2005, approximately 139 families participated in or made use of one or more of those services. The services were offered at various locations. Daily weekday worship services, and the Hebrew School and pre-school programs, were conducted at the Mount Freedom Jewish Center pursuant to a lease agreement between plaintiff and the Hebrew Congregation of Mount Freedom Inc. dated June 26, 2003. The premises covered by the lease consisted of four classrooms, an office, and related common areas. The lease permitted use of the premises for a variety of Jewish programs, including day care and Hebrew School, Monday through Friday during the hours of 6:30 a.m. to 6:30 p.m. The lease term commenced on July 1, 2003 and was in effect as of October 1, 2005.

Saturday morning Sabbath services were conducted at the subject property. Services for the Jewish high holidays of Rosh Hashanah and Yom Kippur were conducted at various rented premises including the Shongum School. Of the 139 families that participated in or used the services provided by plaintiff, 10 to 30 people attended each of the daily weekday prayer services, approximately 100 families attended high holiday services, and varying numbers of people made use of the Hebrew School, pre-school, and adult education programs.

In order to participate in or make use of the programs and services that plaintiff offered, formal membership was not required, nor was the payment of dues. However, dues were imposed in 2005 but not before or after. Those using or participating in the programs offered by plaintiff, such as Hebrew School and pre-school, paid fees for those programs. Everyone

using or participating in the programs, and those only participating in worship services, were requested to make donations to cover the expenses of plaintiff's operations.

Rabbi Bekhor was responsible for organizing all worship services, was administrator of the Hebrew School and was in charge of the administration of the pre-school and other programs offered by plaintiff, including occasional special programs. He conducted worship services, funerals, bar mitzvahs, and weddings, and was responsible for hiring all personnel.

Rabbi Bekhor and his wife are two of the three trustees of plaintiff. They initially acquired the subject property in their names and then conveyed the property to plaintiff for $1.00 in August 2005. The property had received municipal approvals for use as a single family residence. Rabbi Bekhor and his family reside in the property, and have used the property for worship services and the Hebrew School and pre-school programs. Municipal court actions instituted by defendant alleging that any use other than as a single-family residence violated defendant's zoning ordinances were resolved. The basis for the resolution was that school use was not permitted, but worship services were. Plaintiff paid a fine of $250 for the school use.

The exemption for parsonages in New Jersey is set forth in N.J.S.A. 54:4-3.6 which provides in pertinent part as follows:

> The following property shall be exempt from taxation under this chapter: . . . buildings, not exceeding two, actually occupied as a parsonage by the officiating clergyman of any religious corporation of this State, together with the accessory buildings located on the same premises; the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres in extent . . . . [T]he foregoing exemption shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on

account of which the exemption is claimed . . . .

[N.J.S.A. 54:4-3.6.]

In order for the subject property to qualify this exemption, the following criteria must be satisfied: (1) the entity owning the subject property must be organized for the exempt purpose, (2) the property must not be operated for profit, and (3) the property actually must be used for the exempt purpose. Paper Mill Playhouse v. Millburn Township, 95 N.J. 503, 506 (1984). Here, defendant does not dispute that, as of October 1, 2005, the subject property was owned by plaintiff, that plaintiff was a not-for-profit corporation organized for religious purposes, and that the subject property was not operated for profit. Defendant also does not dispute that the land area of the subject property did not exceed five acres. Consequently, the only issues requiring decision under the statutory criteria relate to whether the subject property was "actually occupied as a parsonage" and whether Rabbi Bekhor was an "officiating clergyman of ...[a] religious corporation".

In deciding these issues, I will apply principles well established in our case law, namely, exemptions must be strictly construed and the party claiming an exemption has the burden of proof as to qualification for the exemption. E.g. Friends of Ahi Ezer Congregation Inc. v. City of Long Branch, 16 N.J. Tax 591, 596 (Tax 1997).

The terminology used in the parsonage exemption was construed and defined in St. Matthew's Lutheran Church for the Deaf v. Division of Tax Appeals, 18 N.J. Super. 552 (App. Div. 1952), where the court held that property in Nutley, New Jersey qualified for the parsonage exemption under the following circumstances. The plaintiff did not own church premises, and it offered religious services in a Lutheran church in Newark, New Jersey through the courtesy of that church. The plaintiff, however, did have an established congregation which met at the

church regularly on Sunday afternoons. The minister occupying the property in question conducted the religious services at the church and served the religious needs of deaf people in other cities in New Jersey, conducting worship services at various Lutheran churches.

The Appellate Division held that, for purposes of the parsonage exemption, a clergyman occupying property satisfies the statutory requirement that he or she be an "officiating clergymen of any religious corporation" if he or she is "serving the needs of a reasonably localized and established congregation. In this sense a congregation signifies an assemblage or union of persons in society to worship their God publicly and in such manner as they deem most acceptable to Him, at some stated place and at regular intervals." Id. at 558 (citations omitted). In concluding that the minister in question satisfied these requirements, the court noted that he was assigned by the plaintiff indefinitely to conduct worship for the deaf in New Jersey and had an established congregation in Newark which met regularly at a fixed place. The court concluded that "[t]he fact that he conducted similar services in other churches and in other parts of the State for groups of the deaf should not militate against the exemption." Ibid.

In Goodwill Homes and Missions, Inc. v. Garwood Borough, 281 N.J. Super. 596 (App. Div. 1995), the court held that the parsonage exemption was available to property occupied as a residence by a minister employed by the plaintiff, even though the population of people attending the regular worship services provided by the plaintiff in three separate buildings in Newark, New Jersey was transient and did not necessarily consist of believers in the religious tenets that guided the activities of the plaintiff and the worship services conducted by the minister. The court noted that:

> An institution that conducts religious services several times a week in one location and trains people in its religious tenets as followers of Jesus Christ must be considered a religious congregation. . . . There are public services conducted at a fixed place at regular intervals. Goodwill's status

> as such a congregation is not foreclosed by its massive commitment to the assistance of the poor and other needy individuals. That is a praiseworthy form of religious expression accepted by congregations of all denominations.
>
> Nor is Goodwill disqualified as a religious congregation because its pastor and director-members are of various religious denominations, as are those who attend services, many of whom have probably no present religious affiliation and some of which may be struggling with their religious beliefs.
>
> [Goodwill Homes and Missions, supra at 602-603.]

The clergyman in question led at least one service per week, was responsible for the content and supervision of bible study classes, and generally supervised the religious services provided by Goodwill. The Appellate Division concluded that:

> These duties sound like those performed by congregational leaders of all religious denominations. A congregation has the right to determine how its minister performs his or her religious duties. . . Governmental inquiry into how a minister allocates the performance of his or her religious duties is an improper incursion into the activities of his or her religious organization, an intrusion uncalled for by the statute and proscribed by constitutional protection.
>
> [Id. at 604.]

Based on the holding in Goodwill Home and Missions, the Tax Court, in Friends of Ahi Ezer Congregation, Inc. v. City of Long Branch, supra, 16 N.J. Tax 591, concluded that: "If the duties [of the clergyman] sound like those performed by congregational leaders of all religious denominations, the clergyman is considered an officiating clergyman of the religious corporation." Id. at 595. Accord, Temple Emanu-El v. Englewood City, 21 N.J. Tax 462, 466 (Tax 2004).

In City of Jersey City v. Beth-El Baptist Church, 18 N.J. Misc. 208 (Bd. Tax App. 1940), the then Board of Tax Appeals concluded that the parsonage exemption was available where a portion of the clergyman's residence was used as a house of worship.

> It does not appear to us that any principle of statutory construction operates to deprive the respondent of the tax exemption obviously intended by the Legislature in such a situation, by mere reason of the fact that one building houses both its church and its parsonage.
>
> [Id. at 209.]

I find and conclude that the subject property satisfied the requirements for a parsonage exemption set forth in N.J.S.A. 54:4-3.6 as interpreted by the foregoing cases. I find that Rabbi Bekhor was an officiating clergyman in that the duties and responsibilities described by him in his undisputed testimony "sound like those performed by congregational leaders of all religious denominations." Friends of Ahi Ezer Congregation, Inc. v. City of Long Branch, supra, 16 N.J. Tax at 595. The Rabbi officiated at worship services, was responsible for the administration and hiring of staff for the Hebrew School and pre-school program and, in general, was responsible for running and staffing the programs, services, and facilities offered by plaintiff. I also find that, among the persons participating in or using the services provided by plaintiff, there was a "congregation" as defined in St. Matthew's Lutheran Church for the Deaf, supra, 18 N.J. Super. at 558. Regular worship services were conducted at the Mount Freedom Jewish Center attended by ten or more persons affiliated with plaintiff. Additional worship services were conducted regularly at the subject property as well as at nearby rental facilities in New Jersey.[1] I conclude that the conduct of Sabbath worship services

[1] The holding of Chester Borough v World Challenge, Inc., 14 N.J. Tax 20 (Tax 1994), on which defendant relies, is not applicable to the facts before me. There, the minister residing in the claimed parsonage was an officiating clergyman of a congregation located in New York City. Judge Lasser held

at the subject premises did not preclude their qualification for exemption as a parsonage since the premises otherwise satisfied the requirements for a parsonage exemption under N.J.S.A. 54:4-3.6.

For the foregoing reasons, judgment will be entered granting an exemption to the subject property for tax year 2006.

I am returning to each of you with this letter the Exhibits that you introduced into evidence in your respective cases.

Very truly yours,

Harold A. Kuskin

Harold A. Kuskin, J.T.C.

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that the parsonage exemption was not applicable to the residence of a clergyman serving an out-of-state congregation.