

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Congregation Mishkan Israel Nusach
H'Ari, Lubavitcher Center,
Petitioner,

v

MTT Docket No. 336205

City of Oak Park,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

OPINION AND JUDGMENT

This case involves Petitioner's claim that parcel number 52-25-31-204-001, located in the City of Oak Park, County of Oakland, is exempt from ad valorem taxation. Jerry Pesick and Jason Long, of the firm of Steinhardt, Pesick & Cohen, represented Petitioner. Burton R. Shifman and Robert Gavin, of the firm Shifman & Carlson, P.C., represented Respondent. The hearing was held on June 1, 2011. Respondent filed a Post-Hearing Brief on July 14, 2011 and Petitioner filed a Post-Hearing Brief on July 15, 2011.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner proved by a preponderance of the evidence that it is a house of public worship pursuant to MCL 211.7s. As such, the subject property is exempt from ad valorem property taxes. The subject property's true cash values (TCV), state equalized values (SEV), and taxable values (TV) are:

Parcel Number	Year	TCV	SEV	TV
52-25-31-204-001	2007	EXEMPT	EXEMPT	EXEMPT
52-25-31-204-001	2008	EXEMPT	EXEMPT	EXEMPT

52-25-31-204-001	2009	EXEMPT	EXEMPT	EXEMPT
52-25-31-204-001	2010	EXEMPT	EXEMPT	EXEMPT
52-25-31-204-001	2011	EXEMPT	EXEMPT	EXEMPT

ADMITTED EXHIBITS

P-1. Photographs of the exterior of the subject property.

P-2. Photographs of the interior of the subject property.

P-3. House of Public Worship Exemption Request Form, dated December 6, 2006.

P-4. Letter from Martin D. Bush, City of Oak Park Assessor, to Robert Friedman, dated March 2, 2007.

P-6. The Code of Jewish Law, Volume 1.

P-7. The Code of Jewish Law, Volume 2.

P-10. Excerpts from the Code of Jewish Law.

PETITIONER'S ARGUMENT

Petitioner contends that the subject property, a dormitory used in connection with its yeshiva school, is exempt from taxation under MCL 211.7s for the 2007, 2008, 2009, 2010 and 2011 tax years because it is used predominantly for teaching religious truths and beliefs of the Chabad Lubavitch Movement. Further, Petitioner contends that:

The code of Jewish law contains a breadth of principles that comprise the religious truths and beliefs of the Chabad Lubavitch movement. Importantly for this case, those truths and beliefs include a number of daily rituals and routines that the Chabad Lubavitch movement believes are necessary to properly serve God. The rituals begin before one of the movement's adherents [gets] out of bed in the morning and continue until after going to bed at night and through the night. (Transcript, pp. 5-6).

Petitioner contends that Respondent's denial of the exemption ". . . does not account for either the nature of the Congregation's religious beliefs or that the Congregation teaches its beliefs at the Property." Petitioner's Post-Hearing Brief, p. 1. The subject property is ". . . part of the [Chabad] Lubavitch movement within Judaism, which promotes service to God through strict adherence to the Code of Jewish Law (the "Code"). The Code prescribes rituals that begin when a believer awakens in the morning and continue until after going to sleep at night." *Id.* Petitioner contends that the Code is taught to students inside the classroom and also in the dormitory where the students live.

In support of its respective contentions, Petitioner called three witnesses. Petitioner's first witness was Rabbi Nochem Kaplan. Rabbi Kaplan testified to the Chabad Lubavitch movement's religious truths and beliefs. He detailed the beliefs of the Chabad and indicated that many of the beliefs relevant to this tax appeal are included in the first two volumes of the concise code of Jewish law (Petitioner's Exhibits 6, 7, and 10). Rabbi Kaplan also testified with regard to the Chabad Lubavitch educational movement and the importance of the spirit of the Jewish law becoming second nature to every walk of the students' lives. Rabbi Kaplan testified with regard to the subject property and his personal knowledge of it. He testified that the housing is "absolutely essential" to learning the religious truths and beliefs of the Chabad Lubavitch movement. See Transcript, pp. 18-32.

Petitioner's second witness was Rabbi Mendel Shemtov. Rabbi Shemtov helped found Petitioner and is currently employed there. Rabbi Shemtov testified with regard to the mission or objectives of Petitioner and explained Petitioner's Exhibits 1 and 2. Rabbi Shemtov testified to the importance of communal living for the students and explained the teaching, learning, praying

and other activities that the students are engaged in at the dormitories that facilitate the goals of Petitioner's teachings. See Transcript, pp. 54-70.

Petitioner's final witness was Menachem Rimler, a dormitory counselor for Petitioner. Mr. Rimler testified to his duties and responsibilities as a counselor in Petitioner's student dormitories. Mr. Remler testified with regard to the daily life of Petitioner's students. He chronicled the rituals and activities contained in the Code that the students are expected to practice. See Transcript, pp. 93-112.

RESPONDENT'S ARGUMENT

Respondent contends that the subject property is primarily a residence and is not entitled to a house of worship exemption. Respondent argues that the fact that the property is being used as a residence is strongly indicative of the fact that the property is being used as a normal dormitory with limited religious use.

Respondent states in its Post-Hearing Brief that "[t]he only connection between Petitioner's house of worship, if it still exists as such, and the rabbinical training school, is to provide cover in a sense, to seek exemption. From the testimony of Menachem Rimler, Petitioner's third witness, a rabbi in training and dormitory advisor or resident advisor, the synagogue building functions as a classroom building and dining hall with perhaps a chapel for religious services. He says at page 101 of the transcript: "the students head over across the road to the yeshiva school where the classes are held. After the morning classes, they eat breakfast in the dining room.'" (Emphasis in original). Respondent's Post-Hearing Brief, p. 2. Respondent argues that most hours of the day are spent outside of the dormitories and "there aren't enough hours left in the day for teaching religious truths and beliefs even if mentoring and supervising

could qualify as such to be the predominant activity conducted in the dormitories.”

Respondent’s Post-Hearing Brief, p. 7.

Respondent argues that “[i]t is apparent no matter what takes place in the dormitories, they cannot meet the predominant use requirement for a house of public worship exemption.”

Respondent contends that there is no religious service or teaching taking place during sleep as the requirement for students to wake up at midnight, pray, and read the Torah, has been waived.

See Transcript, p. 119. Respondent also argues that “[n]one of Petitioner’s witnesses could testify that any synagogue or temple had dormitories.” *Id.* Respondent contends that “[s]tudents living in a dormitory is consistent with a rabbinical training school and not with a synagogue or house of worship.” Respondent’s Post-Hearing Brief, p. 3.

FINDINGS OF FACT

1. The subject property is classified as commercial real property and is designed to be used as an apartment building. The subject property, located at 14011-14061 W. Nine Mile Road, Oak Park, Michigan, is currently being used as residences for Petitioner’s religious yeshiva school, the Congregation Mishkan Yeshiva.
2. The true cash values, assessed values and taxable values determined by Respondent for the tax years at issue are:

Parcel Number	Year	TCV	SEV	TV
52-25-31-204-001	2007	\$641,600	\$320,800	\$320,800
52-25-31-204-001	2008	\$640,800	\$320,400	\$320,400
52-25-31-204-001	2009	\$640,800	\$320,400	\$320,400
52-25-31-204-001	2010	\$472,400	\$236,200	\$236,200

52-25-31-204-001	2011	\$407,800	\$203,900	\$203,900
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3. Petitioner is a religious society that owns the subject property.
4. The first two volumes of the abridged Code of Jewish Law dictate the practices of day-to-day life activities.
5. Petitioner’s mission is to teach the religious truths and beliefs of the Chabad Lubavitch movement and to educate students in the lifestyle in adherence to the Code of Jewish Law.
6. Petitioner’s mission is also to “. . . create rabbis that are going to inspire the millions of Jewish people that are not aware of and haven’t been educated in this education properly and they should inspire others, too.” Transcript, p. 82.
7. Students who attend the yeshiva school come from throughout the United States and various countries around the world.
8. All students fourteen years of age and older, outside of limited exceptions, reside in the subject dormitory.
9. Petitioner purchased the subject property to foster a communal living environment to facilitate the students’ education.
10. Students are taught to live a lifestyle in adherence with the Code of Jewish Law.
11. The rituals taught encompass the student’s daily life twenty-four hours per day, seven days per week.
12. The subject property is used for informal gatherings with peers and dorm counselors and formal gatherings with teachers.

13. Students learn from peers in the communal dormitory environment.
14. Dorm counselors teach, enforce, and oversee the religious rituals conducted by the students. They also act as mentors to the students.

CONCLUSIONS OF LAW

On August 25, 2010, the Tribunal issued an Order denying both Petitioner and Respondent's Motions for Summary Disposition. The Tribunal determined that the parties both recognize that Petitioner, a religious organization, owns the property. The Tribunal determined that it could not grant summary disposition in favor of either party because there were genuine issues of material fact outstanding. The Tribunal found that the issue remaining is whether the subject property is used predominantly for teaching the religious truths and beliefs of the society, pursuant to MCL 211.7s, or whether the subject property is used merely for housing students. The hearing held on June 1, 2011 was limited to finding facts that would resolve this issue.

The general property tax act provides that "all property, real and personal, within the jurisdiction of this state, **not expressly exempted**, shall be subject to taxation." MCL 211.1. (Emphasis added.) Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. *Retirement Homes, supra; APCOA, Inc v Dep't of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995). The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:

[I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and **an alleged grant of exemption will be strictly construed** and cannot be made out by inference or implication but **must be beyond reasonable doubt**. In other words, since taxation is the rule, and exemption the exception,

the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. *Michigan Bell Telephone Company v Department of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, *Taxation* (4th ed.), §672, p. 1403.

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax. *Id.* at 207.

It is also well settled that a petitioner seeking a tax exemption bears the burden of proving that it is entitled to the exemption. The Michigan Court of Appeals, in *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002), discussed Justice Cooley's treatise on taxation and held that:

[T]he **beyond a reasonable doubt** standard applies when the petitioner attempts to establish that an entire class of exemptions was intended by Legislature. However, the **preponderance of the evidence** standard applies when a petitioner attempts to establish membership in an already exempt class. (Emphasis added.) *Id.* at 494, 495.

(Also, see *Holland House v Grand Rapids*, 219 Mich App 384, 394-395; 557 NW2d118 (1996).)

In this regard, houses of public worship have already been recognized as an exempt class. Because Petitioner is attempting to establish membership in this class, the preponderance of evidence standard applies.

Pursuant to MCL 211.7s, a property is entitled to an exemption if it is a house of worship. Houses of worship must be "owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the

society.” MCL 211.7s. The court also looks to “whether the entire property was used in a manner consistent with the purposes of the owning institution.” *Institute in Basic Life Principles Inc v Watersmeet Township*, 217 Mich App 7; 551 NW2d 199 (1996).

The subject property is comprised of an “. . . apartment complex of fourteen units where the students reside.” Transcript, p. 58. It was purchased specifically to house students of the Congregation Mishkan Yeshiva. Rabbi Shemtov testified that the mission of the Congregation Mishkan Yeshiva is “[t]o teach religious truths and beliefs of the Chabad Lubavitch movement, and more, in particular, to see – to educate students in the lifestyle that it should be in adherence to the code of Jewish law.” Transcript, p. 56. The Chabad Lubavitch movement “. . . promotes service to God through strict adherence to the Code of Jewish Law (the “Code”). The Code prescribes rituals that begin when a believer awakens in the morning and continue until after going to sleep at night.” Petitioner’s Post-Hearing Brief, p. 1.

The Chabad Lubavitch movement is a religious order, if you will, where the truths and beliefs are such that life needs to be dedicated to godliness, to God’s work, and to see that our sojourn here on Earth is one that is not merely time spent pursuing creature comforts and accumulating things but doing good works and dedicating ourselves to helping others and helping others live the kind of lives that would bring more spirit into their lives.

Transcript, pp. 21-22. Rabbi Kaplan testified that “these truths and beliefs are not just taught in a classroom. They’re experienced over the course of years. They become natural. So that eventually one dedicates one’s life without making a special effort on a daily basis to do anything different than anybody else. It follows naturally.” Transcript, p. 25.

Rabbi Kaplan further testified that “[t]he spirit of [the Code of Jewish Law] is something which is – which transcends the book form. It’s experiential in nature. So how this is applied is something taught through daily living rather than through studying a book.” Transcript, p. 28.

As such, Petitioner believes “[i]t is absolutely essential,” to have housing like [Petitioner’s] available for students learning the religious truths and beliefs of the Chabad Lubavitch movement.” Transcript, p. 29. Respondent argues that housing cannot be essential to the movement because the same truths and beliefs could be taught without a dormitory. Rabbi Kaplan concedes that the function of the house of worship could proceed without a dormitory; however, Petitioner chose to have a dormitory to enhance the teachings of the Chabad Lubavitch movement. Transcript, p. 46.

Respondent also contends that “. . . operating a school to train rabbis with its concomitant dormitories under the guise of a synagogue, doesn’t qualify for the house of public worship exemption. . . .” Respondent’s Post-Hearing Brief, p. 1. Respondent states that “. . . the synagogue building functions as a classroom building and dining hall with perhaps a chapel for religious services.” *Id.* at 2. Respondent concedes that religious schools with chapels are common; however, it is not common for a synagogue or temple to have a dormitory. The Tribunal finds that the issue to be resolved is not the objective test of whether it is typical for a yeshiva school, synagogue, or temple to have a dormitory. Respondent’s arguments are misplaced as the test is subjective as to the subject property only. Specifically, the only issue is whether *Petitioner’s* dormitory is predominantly used for the teaching of religious truths and beliefs of the Chabad Lubavitch movement. The Tribunal does not agree with Respondent’s argument that the subject property is merely housing for a rabbinical training school and not housing also considered a house of worship.

With regard to whether living in a dormitory assists in teaching students the religious truths and beliefs of the Chabad Lubavitch movement, Rabbi Kaplan testified that “[t]o apply

what's taught in the classroom and to make it secondary nature doesn't happen in the classroom . . . it happens when you're interacting with friends in a natural way, in a social way. That's when it really gets inculcated." Transcript, p. 30. Rabbi Shemtov testified that "communal living [is] essential to facilitate and help us achieve our main objective and goal in educating these kids with the religious truths and beliefs that they are – that they shall live a lifestyle twenty-four/seven in accordance to the code of Jewish law." Transcript, p. 63. However, Respondent argues that because the requirement to wake up at midnight, pray, and read the Torah has been waived for Petitioner's students ". . . there is no religious service or teaching taking place during sleep." Respondent's Post-Hearing Brief, p. 6. Though the Tribunal finds compelling Petitioner's witnesses' testimony that the students live the Chabad Lubavitch movement lifestyle twenty-four/seven, the Tribunal finds that the students are not required to be awake and practicing or studying the religious truths and beliefs twenty-four hours per day, as Respondent contends. The Tribunal does not agree that if the students are exempted from some religious requirements the subject property is not entitled to the exemption.

The Tribunal finds that Petitioner's witnesses' testimony shows that the teachings of the Chabad Lubavitch movement affect every aspect of the students' lives. In that regard, the subject dormitories provide the students with a communal living situation that fosters their learning of the Code of Jewish Law. Rabbi Shemtov elaborated by testifying that students "living with their peers, peers that have the same objective and goals in being educated in this lifestyle, with the dorm counselors that assist them in how to live this lifestyle," facilitates the goals of Petitioner's movement. Transcript, p. 66.

With regard to learning, Rabbi Shemtov testified that:

The code of Jewish law requires that everything a Jewish person does, the way he walks, what he looks at when he walks the street, where his mind is, what he's thinking, how he eats, how he plays, how he interacts with other people, if he walks with humility or he walks with arrogance. Everything in his entire twenty-four/seven – a Jew is required to make a hundred blessings a day. . . The way he sleeps, what he's thinking. I can't even think of one moment that these kids go without subconsciously focusing on behaving like a Jew that lives in adherence to the code of Jewish law.

Transcript, p. 78.

When asked where the teaching comes in at the subject property, Rabbi Shemtov testified that:

They have once a week or once in two weeks informal and formal gatherings, either between the boys, between the students with the dorm counselor, they gather together and reflect on their service, on their level of commitment to worshipping God in their day-to-day life in their lifestyle.

There's also formal gatherings and many times you have staff faculty that come in and they gather, like, in the common area, in the basement and such, maybe an apartment, maybe sometimes in the bedroom, just in a very – they're informal or formal in that they mediate, they sing songs, they chant psalms

[T]hey want to take that and discuss it between friends and apply it and apply – how it applies in their life, to their life. That's done more in this setting. Formally with faculty and informally with dorm counselors and even between the students themselves. That is one way that they're being taught in this housing.

Besides that, they are doing so many different rituals in the housing that the dorm counselors are overseeing and assuring that they're doing it correctly, that there's teaching all the time going on.

Transcript, pp. 87-88.

Mr. Rimler, a dorm counselor, chronicled a typical day in the life of a student at the yeshiva. He testified that “. . . while still lying on his bed, one should realize before whom he lies, and immediately upon awakening from his sleep, he should recall the kindness that Hashem,

may his name be blessed, has done for him.” Transcript, p. 98. The students do this by “. . . placing their hands together as such and reciting a special prayer, the Modeh Ani. So their thoughts are from the beginning of the – as they begin their day, their thoughts are already attuned towards God. . . So my duty is to supervise and mentor them in their daily rituals, beginning with this ritual. . . .” *Id.* The students:

. . . are supposed to wash their hands three times on each hand alternately, alternating one to the other, and again, that’s specific. There is a quick, brief p[r]ayer before that specific washing of the hand. And then upon completion they must hurry and spill out that water because that water is considered impure, to spew that out immediately in the bathroom. Afterwards they begin their – they begin to get dressed, and again, there is a specific code, a specific way for them to conduct themselves even while they’re getting dressed.

Transcript, pp. 98-99.

Mr. Rimler testified to various rules and rituals that the students must adhere to according to Jewish Law. He further testified that it is his role to mentor, supervise, and instruct the students in their daily life. Mr. Rimler stated that he eats breakfast and lunch with the students and after lunch the students are provided a long break for recreational activities. He testified that throughout this recreation time he is “. . . supervising them to ensure even during the breaks, even during their exercise, while they’re far away from the classroom, from that setting, that’s all in the hands of the code of Jewish law.” Transcript, p. 105.

During the evenings, students are provided another break where they “. . . retire and wind down, but all in a Jewish context.” Transcript, p. 107. Mr. Rimler stated that he mentors the students during “. . . informal gatherings, when I sit together with the students and it’s a very, very opportune time for students to talk candidly about their day. . . .” Transcript, p. 108. He testified that they may also have formal gatherings when “. . . a teacher will come over to the

dormitory and take them over to the basement and he'll talk with them, have a conversation with the students." Transcript, p. 109. He further testified that when this is done in the dormitory setting it is more effective because the students' ". . . guard is down and they're very candid about where they're finding – what's the most challenging for them in this – in this test of constantly adhering to the code of Jewish law." *Id.*

Mr. Rimler stated, with regard to the day's end, that the students have specific rules and rituals they must adhere to regarding undress, prayer, and sleeping. Again, he mentors the students regarding the end of day rituals and ensures they are performing them correctly.

The Tribunal finds that the testimony and evidence overwhelmingly supports Petitioner's contention that the subject dormitory is a house of worship used predominantly for teaching of religious truths and beliefs of the society. Rabbi Kaplan explained the beliefs and teachings of the Chabad Lubavitch Movement. Rabbi Shemtov and Mr. Rimler both testified that those beliefs are taught to the students at the subject dormitory. Mr. Rimler testified, with specificity, with regard to the daily life of the students. He outlined some of the various traditions and rituals that are taught to the students and are enforced and supervised by the counselors. The truths and beliefs of the Chabad Lubavitch Movement encompass the students' lives whether they are in the classroom, in the dormitory, or are provided with recreational free time. The subject dormitories enhance the students' learning and assist Petitioner in its objective to teach the students' the truths and beliefs of the Chabad Lubavich Movement.

The testimony and evidence supports that the entire subject property is used in a manner consistent with Petitioner's purposes. In sum, Petitioner has proven by a preponderance of the evidence that the subject property is a house of worship that is owned by a religious society and

used predominantly for teaching the religious truths and beliefs of the society. As such, the subject property is exempt from ad valorem taxation for the 2007, 2008, 2009, 2010, and 2011 tax years.

JUDGMENT

IT IS ORDERED that the subject property is exempt pursuant to MCL 211.7s.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of

2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, after December 31, 2008 at the rate of 3.315 for calendar year 2009, after December 31, 2009 at the rate of 1.23% for calendar year 2010, and after December 31, 2010 at the rate of 1.12% for calendar year 2011.

This Opinion and Judgment resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: August 5, 2011

By: Steven H. Lasher