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RELIGION LAW

Broad Tax Exemptions Benefit Congregations

Religious leaders typically are aware of the tax exemption provided by state law for the homes their congregations provide to their clergy. But another exemption may be even more significant.

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The "parsonage" exemption in New York Real Property Tax Law (RPTL) §462 exempts from taxation homes provided by religious congregations to their "officiating clergy," and is generally well-recognized by religious organizations and local taxing authorities.

Another tax exemption that is available to religious organizations (and other not-for-profit entities), contained in RPTL §420-a, is less well understood. In many ways, however, it may be even more beneficial, and more valuable, to congregations than the parsonage exemption.

This column first highlights the rules relating to the parsonage exemption and then discusses the §420-a exemption.

Use by Officiating Clergy

The parsonage exemption was at the heart of a case that arose a number of years ago, after Rockland Hebrew Educational Center, a religious and educational not-for-profit corporation, purchased a home in the village of Spring Valley where its principal, Rabbi Naftali Weinstein, lived with his family and operated the center.

The village revoked the property tax exemption for the home and the center went to court. Among other things, the center argued that the home was exempt under §462.

In its decision, the court explained that, under §462, "property owned by a religious corporation while actually used by the officiating clergymen thereof for residential purposes shall be exempt from taxation."

Here, the court pointed out, the village essentially had conceded, by failing to contest, the center's ownership claim and its status as a religious corporation under New York law.

The court then examined whether Rabbi Weinstein was the center's "officiating clergyman." The court noted that Rabbi Weinstein had testified that he conducted considerable religious activity on the property, including conducting religious services; writing religious books and pamphlets; distributing substantial amounts of goods at religious holiday times, including Passover; preparing for his part in religious services, including Torah readings and sermons; preparing mailing of religious materials; engaging in fund-raising activities related to the center; and conducting

a telephone service for religious education and counseling.

The court rejected the village's contention that the rabbi's outside activities precluded him from being an officiating clergyman. Citing to *Matter of Word of Life Ministries v. Nassau County*, 3 N.Y.3d 455 (2004), the court ruled that the village failed to prove that the rabbi was not a full-time, ordained member of the clergy (the court found that the evidence indicated that he was) or that he did not preside over the congregation's services and ceremonies (the court found that the evidence indicated that he did).

Accordingly, the court concluded, in *Rockland Hebrew Educational Center v. Village of Spring Valley*, 28 Misc.3d 1240(A) (Sup. Ct. Rockland Co. 2010), the village had not met its burden of demonstrating that its revocation of the exemption under §462 was proper.

'Officiating Clergyman'

The "officiating clergyman" requirement of §462 was the focus of the decision by the Supreme Court, Nassau County, in *Holy Trinity Church v. O'Shea*, 186 Misc.2d 880 (N.Y. Sup. Ct. 2001).

In this case, Holy Trinity Church sought a §462 exemption for a home occupied by its choir director. The property was a two-story Cape Cod, with two bedrooms upstairs, one bathroom, a kitchen, a dining room, and a living room downstairs.

Testimony indicated that the choir director was ordained within the Orthodox Church as a subdeacon and cantor, that he was considered part of the liturgical staff, and that he participated in all services on Saturdays and Sundays, as well as feast days. In addition, the choir director participated in sacramental rites such as baptisms, marriages, and funerals, but did not "officiate" at the rites, according to testimony of his pastor.

The court found that although the choir director was ordained a subdeacon and cantor within the Orthodox Church, he could not officiate at weddings or funerals and his responsibility was to provide liturgical music for these ceremonies. The court concluded, therefore, that the choir director was not an "officiating clergym[a]n" within the meaning of §462, and it denied the tax exemption.

Exclusive Use for Exempt Purpose

The parsonage exemption lifts significant burdens from the shoulders of congregations, as it is intended to do. The §420-a exemption may even be more important, given that it exempts more than homes provided to officiating clergy.

Consider all of the property found to be tax exempt in the precedent-setting decision issued by the New York Court of Appeals nearly three decades ago in *Hapletah v. Assessor of Fallsburg*, 79 N.Y.2d 244 (1992).

> The bottom line is that although not all taxes may be barred—certain county and town charges may still have to be paid—both of these exemptions can be quite beneficial.

The case involved Yeshivath Shearith Hapletah, a not-for-profit religious corporation whose primary purpose was the teaching of the principles and doctrines of the Jewish faith. Shearith Hapletah operated a school in Brooklyn and conducted religious educational programs on a 31-acre property it owned in Fallsburg, a town in Sullivan County, referred to as the "Woodbourne facility."

Shearith Hapletah used the Woodbourne facility primarily during the summer months when hundreds of students from two years of age and older were provided rigorous religious and educational instruction seven days each week, with the youngest studying a few hours per day and the older students studying up to eight hours per day.

The Woodbourne facility comprised a main building containing a kitchen and communal dining room for all participants, a ritual bath, recreational facilities, classrooms, synagogues, and a variety of housing facilities including a multiunit dormitory building, 64 bungalows, and six trailers. Ten acres of the 31-acre parcel were largely wooded and were used primarily by the students for hiking.

The housing units were occupied by the rabbis, teaching staff, their wives, and their children, all of whom received religious instruction; married students and their families; single students; and families with very young students whose mothers served as volunteers for the yeshivah and whose fathers mostly participated in Sabbath prayer and religious educational programs during the weekend.

Some of the participants lived away from the property in nearby residences rented or owned by their families. They were transported to the Woodbourne facility by bus each day for classes.

One of the trailers was provided to the caretaker who, in exchange for housing for himself and his family, maintained the Woodbourne facility during the summer months and provided year-round security.

Shearith Hapletah applied for a tax exemption pursuant to §420-a for the tax years 1987 and 1988. The assessor granted the application only in part, however, determining that 64 bungalow units, six house trailers, and 10 acres of land were taxable. The assessor concluded that because these bungalows, trailers, and wooded land were not used exclusively for religious purposes, they were not entitled to the tax exemption and were fully taxable.

Shearith Hapletah went to court to challenge the assessor's deci-

sion. The Supreme Court, Sullivan County, agreed with the assessor that because the trailer used by the caretaker, the 10 acres of wooded land, the bungalows, and the five remaining trailers were not used exclusively for religious purposes, they were taxable.

The Appellate Division, Third Department, reversed after finding that the entire 31-acre parcel was used exclusively for religious purposes. The dispute reached the Court of Appeals, which affirmed.

In its decision, the court explained that, under §420-a, real property owned by a religious corporation, if used exclusively for religious purposes, was exempt from taxation.

The court was not persuaded by the town's argument that although portions of the property, including some of the dormitories, the communal cooking and eating facilities, and recreational facilities, were entitled to tax-exempt status because they were used exclusively for religious purposes, those portions of the property that were used exclusively for residential purposes, such as the caretaker's trailer, the rabbis' residences, and the bungalows and other trailers used by families spending the summer at the facility, were fully taxable because they were not "necessary or fairly incidental" to the operation of the religious programs.

According to the court, although exemption statutes typically had to be strictly construed against the taxpayer, the interpretation of statutes governing religious exemptions "should not be so narrow and literal" as to defeat their purposes of "encouraging, fostering and protecting religious and educational institutions."

The court then held that the test of entitlement to tax exemption under the "used exclusively" clause of §420-a was whether the particular use was "'reasonably incident[al]' to the [primary or] major purpose of the [facility]." Put differently, the court continued, the determination of whether the property was used exclusively for statutory purposes depended on whether its primary use was "in furtherance of the permitted purposes."

The court decided that the housing facilities challenged by the town were occupied exclusively by staff, teachers, rabbis, and families, members of which either were students at the yeshivah or parents of students too young to attend the school without parental supervision. According to the court, if Shearith Hapletah was unable to provide residential housing accommodations to its faculty, staff, students, and their families, its primary purposes of providing rigorous religious and educational instruction at the yeshivah would be "seriously undermined." Therefore, the court ruled, these housing facilities were "necessary and reasonably incidental" to the primary purpose of the Woodbourne facility, and this was so notwithstanding the existence of other housing facilities nearby.

Next, the court rejected the town's contention that the trailer occupied by the caretaker fell outside the "necessary and reasonably incidental" rule because the trailer was merely provided to the caretaker in exchange for his services and bore no relation to the purpose of the yeshivah.

The court observed that the caretaker lived in the trailer year-round and that his full-time job was to maintain the premises during the summer months and to keep the property secure during the remaining months of the year. In the court's opinion, the use of the trailer was "clearly incidental to the maintenance of the Woodbourne facility" and it also was tax exempt.

Finally, the court ruled that the 10-acre wooded parcel of land used for recreational purposes by the students also was incidental to the primary religious purpose of the entire 31-acre parcel and that it was entitled to the exemption as well.

Conclusion

As 2019 draws to a close, congregations may want to examine the ways that they can benefit from the tax exemptions provided by §§462 and 420-a and how they can obtain those benefits in 2020 and beyond. There typically are filing deadlines to keep in mind (although it is worth noting that the Court of Appeals, in *Emunim v. Fallsburg*, 78 N.Y.2d 194 (1991), ruled that there was "no provision in RPTL 420-a conditioning entitlement to a mandatory property tax exemption upon the filing of an application") and documents that should be prepared in anticipation of seeking the exemption and litigating any improper denial.

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