

STATE OF MICHIGAN
COURT OF APPEALS

CONGREGATION MISHKAN ISRAEL
NUSACH H'ARI,

Petitioner-Appellee,

V

CITY OF OAK PARK,

Respondent-Appellant.

UNPUBLISHED
December 13, 2012

No. 306465
Tax Tribunal
LC No. 00-336205

Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

Respondent City of Oak Park appeals as of right the Michigan Tax Tribunal order granting petitioner Congregation Mishkan Israel Nusach H'Ari tax exemption for the subject property under MCL 211.7s as a "house of public worship." The subject property is an apartment complex used to house students who attend a religious school across the street. We reverse because the property is not predominantly used for teaching those beliefs, but rather as a residence for students who practice and observe those beliefs.

We review the tribunal's statutory interpretation and proper application of the statute de novo and review factual findings to determine whether they are supported by "competent, material, and substantial evidence on the whole record." *Briggs Tax Service, LLC v Detroit Public Schools*, 485 Mich 69, 75 & n 10; 780 NW2d 753 (2010), quoting *Michigan Bell Telephone Co v Treasury Dep't*, 445 Mich 470, 476; 518 NW2d 808 (1994); *Danse Corp v Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002).

Petitioner was granted a tax exemption under MCL 211.7s, which provides:

Houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and any parsonage owned by a religious society of this state and occupied as a parsonage are exempt from taxation under this act. Houses of public worship includes buildings or other facilities owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the society.

Tax exemptions are strictly construed in the government's favor. *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008). When a petitioner attempts to prove an

existing exemption applies, it must do so by a preponderance of the evidence. *ProMed Health Care v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).

Petitioner congregation concedes that the apartment buildings are not a parsonage nor a monastery. Petitioner also does not argue that the apartments are used for religious services. Thus the sole basis under which the property could qualify for an exemption under MCL 211.7s, and the basis under which the Tribunal found for petitioner, is that the apartments are “used *predominantly* for . . . *teaching* the religious truths and beliefs” of petitioner.¹ (emphasis added).

The facts are largely undisputed. Petitioner’s students spend the great majority of their time engaging in religious study in the congregation’s main synagogue structure which is across the street from the apartments. They also eat their meals and observe the rituals relevant to eating in the main synagogue structure. The students reside in the apartments; they sleep and conduct their personal hygiene in their respective apartments and keep their possessions there. They also use the apartments for study and some recreation. At the time relevant, 56 students lived in the apartments along with three dorm counselors who have undergone rabbinical training but are not yet ordained.

Petitioner presented testimony from two rabbis explaining that petitioner’s branch of Judaism involves strict adherence to hundreds of commandments many of which address how to perform ordinary tasks of life, and which require the offering of prayers to be said when such tasks are performed. According to the testimony, there are precise religious rules governing how one sleeps, awakens, dresses, conducts personal hygiene and the like. The testimony made clear that students are expected to strictly observe these rules when they are in the apartments just as when they are in the synagogue. One of the counselors, Menachem Rimler, testified that he lives on the subject property with the students, along with the other two counselors. He testified that the students mainly use the subject property for sleeping, recreation, and studying. He explained that in addition to residing there themselves, the counselors supervise and mentor the students as they practice the numerous rituals associated with their faith and will correct them if they observe them doing so incorrectly or sloppily. However, neither Rimler nor anyone else testified that the students conduct their observances as a supervised group and this appears consistent with the fact that the observances are connected to daily activities such as dressing, washing, using the bathroom and sleeping.² Rimler did not testify that the rules that must be followed vary from day to day or week to week such that new teaching is required when changes occur.

Rabbi Shemtov, dean of the school, testified: “They [the students] study in the building or the congregation, and then across the street they reside—that’s where their housing is.” He described the provision of student housing as having an educational as well as residential

¹ The parties agree that there is a property tax exemption available for school dormitories, but that petitioner has not sought such an exemption.

² Petitioner concedes that the requirement that adherents of this religious group wake at midnight and pray is waived for its students.

purpose, testifying 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” and that “communal living [is] essential to facilitate and help us achieve our main objective in educating these kids with the religious truths and beliefs that they . . . shall live a lifestyle twenty-four/seven in accordance to the code of Jewish law.” At the same time, he agreed that “one can teach the same truths and beliefs without a dormitory” and that many, if not most yeshivas do not provide student housing. He also testified that the students meet as a group with the counselors only once every week or two.

Having reviewed the record, we do not find “competent, material, and substantial evidence” to support the Tribunal’s conclusion apartment building is “used *predominantly* for . . . *teaching* the religious truths and beliefs of the society” as required to qualify for a tax exemption under MCL 211.7s. The facts of this case are similar to those in *Michigan Christian Campus Ministries, Inc v Mount Pleasant*, 110 Mich App 787; 314 NW2d 482 (1981) where a Christian religious society owned a building where it housed Central Michigan University students that were observant Christians. The building was used by the students for housing as well as for “religious counseling, fellowship (group singing, prayer, and Bible study), religious teaching, sermons and sacraments.” This Court concluded that the religious functions were “ancillary to the residential function rather than vice versa.” *Id.* at 792-793.³

Petitioner asserts that *Michigan Christian Campus Ministries*, is not on point because the students at their school must be constantly attentive to observance of the religious law as they conduct everyday activities. The testimony does clearly demonstrate that the students’ religious practice is not limited to an occasional prayer or mental contemplation upon religious values and morality. Rather, their observances of rabbinical law governs how they carry out nearly every activity of the day. While this presents a difference from *Michigan Christian Campus Ministries*, this difference does not mean that the apartments are “used predominantly for . . . *teaching* the religious truths and beliefs.” Even accepting that every moment of the students’ time in the apartments is spent in *observing* and *practicing* the laws of their faith, this does not lead to the conclusion that every moment is spent “teaching” the students or that the building is used predominantly for teaching. The teaching occurs overwhelmingly in the synagogue building and while some teaching also occurs in the apartments as the three counselors provide advice and correction at undefined intervals and in undefined amounts to 56 students, we find no basis in the record to conclude that such advice and correction is the predominant activity in the apartments. It is undisputed that the overwhelming majority of the time the students spend in the apartments is while they are sleeping. Moreover, there is no testimony that the three counselors

³ The version of the exemption statute in force during the years at issue in *Christian Campus Ministries* provided for exemption only if the building was used “exclusively” for religious services or teaching. However, the statute had already been amended so as to substitute “predominantly” for “exclusively,” and the Court both made note of the amendment and phrased its analysis to be applicable under either version of the statute. 110 Mich App at 792-793.

routinely observe all, most, or even any of the students, as the students carry out their observances in their apartments. The occurrence of *some* teaching does not mean that the apartments are “predominantly” used for teaching. Nor does the fact that a religious society’s observances pervade all aspects of daily life mean that every building owned by that society is tax exempt because daily life occurs therein. The issue is not whether observances take place, but whether *teaching* is the *predominant* function of this apartment complex that sits apart from the actual synagogue and classrooms. The statute, which must be strictly construed in favor of the taxing authority, only allows for an exemption when the property is “predominantly” used for holding religious services or teaching religious truths and beliefs and the record does not provide a basis for such a conclusion.

Petitioner relies on *Institute in Basic Life Principles v Watersmeet Twp*, 217 Mich App 7, 10, 19; 551 NW2d 199 (1996), but we find it inapposite. That case was concerned primarily with whether or not the petitioner constituted a religious society, an issue not relevant here. Petitioner is correct that *Institute in Basic Life Principles*, also rejected the “quantum of use test” previously followed in *Lake Louise Christian Community v Hudson Twp.*, 10 Mich App 573; 159 NW2d 894 (1968). In *Lake Louise*, the religious organization owned approximately 2500 acres on which it operated a religious summer camp. The question was whether the undeveloped, wooded acreage therein would receive the exemption or if it would only be applied to the area that had been developed with buildings and other facilities. The Court concluded that whether the undeveloped land would receive the exemption turned on the “quantum of use” to which it was put. The Court held that the undeveloped property was not used with sufficient frequency for it to be considered “occupied” which was a requirement of the statutory exemption. The “quantum of use test” was thereafter rejected in *National Music Camp v Green Lake Twp*, 76 Mich App 608; 257 NW2d 283 (1977) and *Kalamazoo Nature Center v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981) each of which noted the important role of undeveloped land to the property owner’s charitable mission.

Institute in Basic Life Principles involved a religious as opposed to a charitable exemption, but the issue remained whether the undeveloped portion of a camp or campus that was partially developed was included in the tax exemption. The Court followed the cases just referenced and rejected the “quantum of use” test for this undeveloped land.

Contrary to petitioner’s suggestion, however, the “quantum of use” test is not relevant here. The instant case does not involve large tracts of open and contiguous land only some of which is developed. Here, the tax exemption is sought for a non-contiguous, developed parcel of land on a city street. The question is not whether it is used sufficiently to be considered occupied; it is being put to a great deal of use and it is not disputed that some of that use is the teaching of religious truths. The question that the statute demands we answer, however, is whether petitioner has met its burden to prove that the apartment complex is being used “predominantly” for “teaching religious truths” as opposed to predominantly for residential or other uses. For the reasons discussed above, we find that the record does not support such a conclusion.

Reversed and remanded for entry of summary disposition in favor of respondent.⁴ We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Douglas B. Shapiro

⁴ Respondent objected to admission into evidence of testimony and documents concerning the code of Jewish law, on the grounds that doing so would improperly entangle the courts in determining what religious doctrines are central to a given faith. We have not addressed the merit of those objections given our conclusion that the apartment buildings do not fall within the statutory exemption even if we assume the centrality of the code of Jewish law to petitioner's religious faith.