

OPinion 1195

MAR 20 1980

IN THE SUPERIOR COURT OF  
THE DISTRICT OF COLUMBIA  
TAXATION DIVISION

JOSEPH M. BURTON  
CLERK OF  
SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
TAX DIVISION

MAR 20 1980

FILED

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WASHINGTON B'NAI B'RITH  
HILLEL FOUNDATION, INC.  
2129 F Street, N.W.  
Washington, D.C. 20037,

Petitioner

\* DOCKET NOS. 2633, 2816

vs.

DISTRICT OF COLUMBIA,

Respondent

\*\*\*\*\*

JUDGMENT

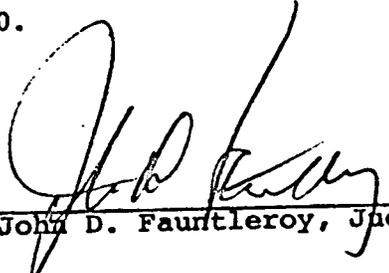
This consolidated proceeding (arising from the successive appeals by Petitioner from the assessment in fiscal years 1979 and 1980, respectively, of its subject real property) having come on for trial before this Court pursuant to the parties' respective motions for summary judgment on 7 February 1980, and a Memorandum Opinion And Decision having been duly rendered on 11 March 1980, it is

ORDERED AND ADJUDGED that Petitioner's motion for summary judgment shall be, and hereby is, granted, and Respondent's cross-motion for summary judgment shall be, and hereby is, denied; and it is further

ORDERED AND ADJUDGED that the improved real property owned by the Petitioner and located at 2131 F Street, N.W., in

the District of Columbia (which improved real property is described as Lot 805 in Square 80) is, and continuously since 1 July 1978 has been, exempt from taxation; and said improved real property shall remain exempt from taxation until such time as it no longer qualifies for exemption under the provisions of D.C. Code §47-801a(n) and (r)(1).

Dated this <sup>7<sup>th</sup></sup> day of March 1980.

  
John D. Fauntleroy, Judge

Copies to:

John R. Risher, Jr., Esq.  
Attorney for Petitioner

Richard G. Amato, Esq.  
Assistant Corporation Counsel  
Attorney for Respondent

Ms. Carolyn L. Smith  
Director, District of Columbia  
Department of Finance and  
Revenue

*R. Stanfield*  
*3/21/80*

IN THE SUPERIOR COURT OF  
THE DISTRICT OF COLUMBIA  
TAX DIVISION

JOSEPH M. LARSON  
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SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
TAX DIVISION

MAR 20 1980

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WASHINGTON B'NAI B'RITH  
HILLEL FOUNDATION, INC.,

Petitioner

vs.

DISTRICT OF COLUMBIA,

Respondent

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FILED

Docket Nos. 2633, 2816

MEMORANDUM OPINION AND DECISION

This is an appeal by the Petitioner, Washington B'nai B'rith Hillel Foundation, Inc. (the "FOUNDATION"), from the assessment of real estate taxes against certain of its real property during fiscal years 1979 (Docket No. 2633) and 1980 (Docket No. 2816). The cases were consolidated for hearing with the consent of both parties, and the hearing on the parties' respective motions for summary judgment was conducted on 7 February 1980. The District of Columbia having stipulated to the entirety of the Foundation's Statement of Undisputed Material Facts, the Court hereby enters the following as its findings of fact and conclusions of law.

FINDINGS OF FACT

1. This is an appeal, brought pursuant to D.C. Code §47-801e, from the assessment for taxation of Lot 805 in Square 80 and the structure thereon which have been owned by

the FOUNDATION since December, 1977. The taxes in controversy for fiscal year 1979 are \$1,439.00,<sup>1/</sup> and for fiscal year 1980 are \$1,617.00,<sup>2/</sup> plus the additional amounts the Respondent District of Columbia claims are owed as penalty and interest. A copy of each notice of assessment is attached to the Complaint as Exhibit A.

2. THE FOUNDATION is a non-profit, District of Columbia corporation which was incorporated pursuant to D.C. Code §29-601, et seq. in 1946. It serves the basic purposes of all Hillel organizations which provide to Jewish and other students -- in a dormitory setting, and as an integral part of a university or college system -- instruction and training in the religion, culture, and practices of Judaism. Thus, as the FOUNDATION's articles of incorporation state, it exists

To promote, foster, sponsor and conduct religious worship, study and training and... other educational, religious and philanthropic activities within the District of Columbia... on behalf of the student body of the George Washington University...

3. There are an estimated 6,000 Jewish students of the George Washington University whom are served in various ways by the FOUNDATION. The FOUNDATION also serves other university students of different faiths and creeds as its activities are

1. The fiscal year 1979 assessment is based upon an asserted land value of \$80,095, and a "residential row" structure value of \$13,346, i.e., a total value of \$93,441.

2. The fiscal year 1980 assessment is based upon an asserted land value of \$94,480, and a "residential row" structure value of \$10,520, i.e., a total value of \$105,000.

based on non-discriminatory principles, and although rooted in Judaism, are offered and used as an integral part of the George Washington University system. These activities (for which the FOUNDATION's facilities remain inadequate) include regular orthodox, conservative and reform religious services, educational and training classes, addresses by prominent speakers, and other charitable efforts of an immediately local, as well as regional and international concern. Thus, on a constant daily bases, the FOUNDATION serves as a central location within the George Washington University complex addressing not just the needs of the university's Jewish students, but also, in contributing to the needs and total function of the university, as a whole, by serving as a center for religious, ethical and cultural study rooted in the tenets and practices of Judaism.

4. The efforts of the FOUNDATION are directed by a Rabbi who is employed on a full-time basis. Thus the District of Columbia admits that "[a]t all times material to this controversy, the FOUNDATION has duly served its charitable purposes," and is a "religious corporation" within the meaning of D.C. Code §47-801a(n).

5. Since 1948, the FOUNDATION's activities have been directed from its center, 2121 "F" Street, N.W. That building<sup>3/</sup> is situated on two lots (Lots 803 and 804, Square 80) consisting of approximately 6,775 square feet.

3. The building originally consisted of two row houses which since have been used (through renovation) as a single structure. For assessment purposes the District of Columbia continues to value each lot and each of the originally separate structures, separately.

The building is a residential structure (the larger portion of which is three-stories, the smaller two; see supra note 3) which continuously, and as of the date on which this appeal was filed, also served in part as a dormitory. Since prior to the acquisition of the subject lot it has been inadequate for all of the FOUNDATION's purposes, thus necessitating the use of other facilities provided by the university. The District of Columbia has always admitted that the previously owned real property is exempt from taxation by D.C. Code §47-801a(n), (r)(1), because owned and used by the FOUNDATION "[a]s an incident of its charitable activity."

6. The subject lot (805) consists of approximately 2,362 square feet, and is located immediately adjacent to the center. (Photographs of the center and the subject property (Petitioner Exhibits 1, 2, 3, and 4) were received into evidence without objection by the District of Columbia.) There is a single family two-story house at the rear of the lot; the remaining two-third frontage is the front and side yard of the FOUNDATION's complex which is enjoyed by the FOUNDATION and the students who use its facilities. This property was accepted by the FOUNDATION as a donation in 1977 to be used with the adjacent exempt lots solely to augment the FOUNDATION's ability to serve its purposes; since then it has been only so used, and the FOUNDATION intends that it not be used for any other purpose. Therefore it, along with the FOUNDATION's adjacent property, forms a unified assembly constituting

the FOUNDATION's complex, and is reasonably required for the FOUNDATION's religious and other charitable purposes.

7. When acquired the structure on the subject lot was deemed uninhabitable by the District of Columbia because <sup>it was found to be</sup> structurally unsafe. Although the FOUNDATION has continuously desired to rehabilitate it, its financial condition has prohibited it from doing so. Therefore, solely because of its impecunious circumstances the FOUNDATION has not occupied the structure, as distinguished from the remaining two-thirds yard of the lot which is an integrated part of its complex.

8. In 1978, the FOUNDATION, having informed the District of Columbia of its ownership of the subject lot upon filing the deed to it for recordation, formally advised that it believed the lot, just as the adjacent ones, was exempt from taxation, and "applied for an exemption." (The FOUNDATION's communications are attached to the respective Complaints as Exhibits B,C). The District of Columbia disagreed, and by letter of 21 September 1978 replied:

A recent inspection by the assessor disclosed that the subject building has not been occupied or used for the purposes of the Washington B'nai B'rith Hillel Foundation, Inc., since its acquisition on January 1, 1978. The building appears to have been vacant for a considerable period of time and extensive repairs are required to make the building habitable.

Under the provisions of Section 47-801(n), D.C. Code, the building must be "primarily and regularly used for religious worship, study, training and missionary activities". Therefore, your application for exemption from the real property tax must be denied until such time when the property is actually occupied and used for an exempt purpose. (Emphasis added.)<sup>4/</sup>

However, in its letter the District of Columbia did not assert that the yard is not used nor occupied;<sup>5/</sup> and during oral argument it conceded that physical occupancy is not necessarily dispositive of the issue of whether the property is exempt. In fact the land is used by the FOUNDATION as a yard, and a source of light and air for the buildings it surrounds.

9. The FOUNDATION acquired the subject property with a reasonable expectation that its exemption from taxation would be recognized. Payment of the taxes would increase the drain on the FOUNDATION's limited economic resources, and thereby both further reduce its ability to rehabilitate the structure and deprive it of funds it otherwise would use for these purposes.

4. For fiscal year 1979 the District of Columbia placed a lesser value upon the smaller of the two occupied structures, see supra note 3, i.e. \$9,676, than it did on the uninhabitable one, i.e., \$13,346, although they are of the same size. For fiscal year 1980, it has sought to equalize the values; however it continues to value the uninhabitable structure at \$944.00 more than the smaller habitable one.

5. As noted, supra notes, 1, 2 more than 85% of the tax in controversy is attributable to the land.

10. The parties, by their attorneys, have agreed that this appeal may be appropriately resolved by summary judgment.

CONCLUSIONS OF LAW

1. By virtue of D.C. Code §47-801a<sup>6/</sup>, the structures and land respectively of "religious organizations" are exempt from real property taxation when "used" by the organization for its religious purpose.<sup>7/</sup> As the District of Columbia concedes, the determination of whether (or when) property is physically occupied is not necessarily determinative of its use, District of Columbia v. Catholic University of America, 397 A2d 915, (D.C. App. 1979) (university property does not become subject to taxation because not occupied); see, also, District of Columbia v. Vestry of St. James, 90 U.S. App. D.C. 314, 153 F2d 621 (1946) (pastoral residence not subject to taxation even though portion is not occupied by minister,

6. The provision provides:

(n) The real property exempt from taxation in the District of Columbia shall be the following and none other:

\* \* \*

Buildings belonging to religious corporations or societies primarily and regularly used for religious worship, study, training and missionary activities.

\* \* \*

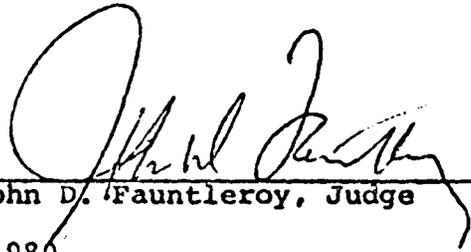
(r) (1) Grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to an exemption under the provisions of [D.C. Code] sections 47-801a....

7. There is no contention by the District of Columbia that the "grounds are not "reasonably required," D.C. Code §47-801a(r) (1); indeed the District has stipulated that "since prior to the acquisition of the subject lot [the Foundation's property was] inadequate for all of the Foundation's purposes," and that the subject lot "is reasonably required for the FOUNDATION's religious and other charitable purposes." Findings of Fact 5, 6; Respondent's Statement of Undisputed Material Facts 2.

but rented to defray maintenance expenses); District of Columbia v. George Washington University, 100 U.S. App. D.C. 140, 243 F2d 246 (1957) (university property remains exempt when not occupied but held for parking); and there is no requirement for continual physical occupancy by a religious organization as a condition of the exemption from taxation. Ibid.

2. Although the FOUNDATION has not continually and physically occupied the entirety of the subject property, it acquired the property with the intent to use it for the FOUNDATION's religious purposes, and so used it within the contemplation of the pertinent statutory provisions, see District of Columbia v. Catholic University of America, supra, during fiscal years 1979 and 1980 as part of its complex.

3. The FOUNDATION's Lot 805 in Square 80, and the improvement thereon (2131 F Street, N.W.) therefore were exempt from taxation in fiscal years 1979 and 1980 because they were owned by it, and primarily and regularly used for its religious, and allied purposes. Therefore the assessment of this property during these fiscal years was erroneous, and no real property tax, penalty nor interest is due in respect to the said property for fiscal years 1979 and 1980. Accordingly, the FOUNDATION's motion for summary judgment should be granted, and the cross-motion of the District of Columbia should be denied.

  
John D. Fauntleroy, Judge

Dated this 17th day of February, 1980

*Open in  
no. 1209*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

ROCK CREEK PLAZA - WOODNER LIMITED PARTNERSHIP, Ian Woodner, General Partner,

and

3636 WOODNER LIMITED PARTNERSHIP Ian Woodner, General Partner,

and

JONATHAN WOODNER COMPANY, INC.,

Petitioners,

v.

DISTRICT OF COLUMBIA,

Respondent.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA TAX DIVISION

APR 20 1982

FILED

Docket No. 2675

ORDER

The Court having made its Findings of Fact and Conclusions of Law, it is this 17th day of April 1981, 1982

ORDERED:

1. That respondent District of Columbia is entitled to a payment of additional taxes assessed against Lots 831 and 832 in Square 2624 and on Lots 352, 353, 354, 358 and 839 in Square 2621 in the District of Columbia for Tax Year 1979, commencing July 1, 1978 and ending June 30, 1979, in the total amount of \$14,443.56.

2. That the full market value for the land and improvements of the subject property for purposes of District of Columbia real property taxation for the Tax Year commencing July 1, 1978 and ending June 30, 1979 is as follows: