

RECEIVED
SEP 19 2003

September 16, 2003

Mr. John Smith, Jr., CAE
Orange County Assessor
200 South Cameron Street
P.O. Box 8181
Hillsborough, NC 27278

Dear Mr. Smith:

I am writing to you on behalf of the Chapel Hill Kehillah, a new synagogue in Orange County. Our congregation requests review of 2002 property taxes assessed (and paid under protest) against the synagogue.

Background

The Chapel Hill Kehillah is, to the best of our knowledge, the first synagogue in the history of Orange County. Its presence is of enormous importance to the Orange County residents of the Jewish faith. "Kehillah" (pronounced kih-hee'-lah) is a Hebrew word meaning "congregation." The congregation began a number of years ago as a group of people holding religious services in their homes and in borrowed halls. When the Chapel Hill Bible Church decided to move to larger quarters, making its Mason Farm Road property available, Kehillah members realized this presented an unexpected but ideal opportunity. Accordingly, many volunteers labored for months to obtain the loans and contributions necessary to buy the property, and the purchase was accomplished in August 2001.

A Completely Unexpected Tax Bill

In February 2003, the Kehillah received a phone call from the Orange County Tax Assessor's Office informing the synagogue that it owed nearly \$25,000 in back property taxes for 2002, including assessments for the County (approximately \$12,700), the Town of Chapel Hill (approximately \$8500), and the Chapel Hill-Carrboro Schools (approximately \$3000). When informed that the Kehillah was a religious organization presumably exempt from this tax, the Assessor's Office responded that it was too late for the synagogue to obtain a 2002 property tax exemption. Despite the unquestioned (even by the Tax Assessor) religious use of the Kehillah property during 2002, the Kehillah was

subjected to an enormous 2002 property tax bill, calculated as if the property were being used for private or commercial purposes rather than as a house of worship.

The rationale given by the Assessor's Office for this tax liability was that the Kehillah did not submit a formal application for a 2002 tax exemption before the end of the year 2002. Presumably the Tax Assessor's office was basing this determination on NCGS 105-282.1(a1), which includes a provision for submission of exemption applications after the listing period but only within the year for which the tax is levied. The Tax Assessor's office did not challenge the Kehillah's qualification as a religious property for tax exemption under NCGS 105-278.3 *and in fact has granted the Kehillah such an exemption for 2003*. The assessment was based solely on the claim that an application for exemption needed to have been filed before the end of the year but was not.

In March 2003, threatened with growing interest charges and warned by the Tax Assessor's Office that the Kehillah would be publicly named as a tax delinquent, the Kehillah paid the full 2002 amount to the County under protest. Our purpose here is to explain why this assessment was mistaken and should be returned to the Kehillah.

The Property's Long History of Tax Exemption

The property in question has long been exempt (except to a small extent for certain non-exempt uses) from property taxation as the premises of the Chapel Hill Bible Church. The Bible Church had not been required to file an application for exemption for many years because NCGS 105-282.1(a)(2) states that once an application for religious exemption has been approved, further applications in subsequent years are unnecessary. When the Kehillah purchased the property from the Bible Church in August 2001, the members of the Kehillah were unaware that a new application for exemption might be required when one religious entity replaces another religious entity on the same already-exempt property. The members of the congregation who handled administrative matters for the congregation were not lawyers. The congregation had no business manager or other employee who was aware of property tax law. In fact, the only employees were a secretary and a Sunday School director and, later, a part-time bookkeeper, as well as the Rabbi.

This was a group of volunteers trying to establish a new religious congregation in their spare time. The congregation had never before owned property and had never before had to deal with the unique status of religious property. Informal conversations with members of various churches, who had not within memory had to file exemption applications for their churches, reinforced the impression that once an exemption has been granted based on a property's religious use, and presuming that the property continues to be used for religious purposes, no new application is necessary.

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Inadequate Communication and Notice

A word from the Tax Assessor's Office could have alerted the Kehillah to file a new application for exemption notwithstanding the exempt status of the property at the time of its purchase. In fact, the Kehillah received three mailings from the Tax Assessor's office during 2002. But none of the three provided notice of a need to file an application for tax exemption:

- 1) The first mailing was a form which described the Kehillah property as a "church lot." (See attached.) In addition, it stated that the property's "assessed value" as of January 2002 – a point in time at which the Kehillah had already been the owner of the property for over four months – was \$207, 235, a value which clearly indicated an exemption for most of the property value. The small print on the mailing stated that the form is to be mailed back "if you are applying for an exemption," but the "church lot" description and "assessed value" confirmed the Kehillah's understanding that the property was already exempt. A tear-off section, the return of which would constitute the owner's "listing" of the property, was never torn off and never sent, again because the "church lot" description confirmed the understanding that the property's exempt status was secured.
- 2) The second mailing, dated 4-12-2002, was a "Notice of Value Change" which stated a "true market value" of the property. (See attached.) The "true market value" amount was much higher than the "assessed value" amount stated in the first mailing, but there was nothing to indicate that this indicated a change in exemption status. These appeared to be separate but consistent dollar figures, one stating the tax assessment value and the other stating the property's market value. This second mailing stated nothing whatsoever about property tax liability and nothing about exemption or exemption status.
- 3) The third mailing, a property tax bill, continued to describe the property as a "church lot" and appeared to be a computer-generated statement requiring no response from the owners of the long-exempt "church lot." (See attached).

A single phone call from the Assessor's office during 2002 would have clarified the exemption issue. A letter or other writing stating that an application for exemption should be filed notwithstanding the continuing religious use of the property, also would have clarified the issue. Neither occurred until February 2003, after which the Kehillah responded immediately. But, according to the Assessor's Office, it was too late to affect the 2002 tax assessment.

We believe that the Kehillah's actions - or inactions - were reasonable, the behavior of ordinary, prudent citizens, and should not be the basis for requiring the congregation to pay an enormous 2002 tax bill calculated as if the congregation were not a religious entity.

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Review of This Tax Burden Is Necessary In This Situation

Rigidly imposing an enormous property tax burden on a single financially-strapped religious institution without a fair warning of its liability seems clearly inequitable and arguably illegal in light of the special circumstances in this case. This is not an instance in which a religious group has purchased property never previously exempt and needs to explore the filing of a request for an exemption from taxes. This is a case in which the volunteers who established the synagogue reasonably understood that a religious exemption from the tax on the property would continue from one religious entity to another.

Although there does not appear to be a great deal of case law relevant to this matter, our research has revealed at least three substantial legal arguments in support of return of the payment.

(1) The "Use" of the Property for Religious Purposes Has Not Changed; Therefore No New Exemption Request Was Required.

Whether a new exemption application is required when property already exempted for religious purposes is purchased by another religious entity which continues the religious use of the property, is debatable in the applicable statute, NCGS 105-282.1. The relevant language is set forth below:

(a)(2) Single application required. -- An owner of one or more of the following properties eligible to be exempted or excluded from taxation must file an application for exemption or exclusion to receive it. *Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion (emphasis added).*

The statute is explicit that a new application for exemption should be filed where there is acquisition of additional property or improvements, or a change in the use of the property or the eligibility of the taxpayer. None of these conditions occurred in this case. To the contrary, the religious use of the property indisputably continued.

The only basis for claiming that NCGS 105-282.1 (a)(2) requires the Kehillah to have filed a new application for exemption in spite of the property's unbroken, continuous use for religious purposes, is to argue that the terms "an owner" and "the owner" in the statute imply that *each new* owner must file for the tax exemption. Although this is a reasonable interpretation, it is no more reasonable than one that grants "*the*" owner -- whoever that owner might be -- the benefit of the ongoing exemption without the need to apply for a new exemption. We note the Court of Appeals statement in In re Appeal of Valley Proteins, Inc., 128 N.C. App. 151, 494 S.E. 2d 111 (1997), upholding a property tax

exemption even though the proper application form was not filed within the tax year, that “[i]f the strict, liberal (sic) interpretation of a statute contravenes the manifest purpose of the Legislature, the reason and the purpose of the law should control and the strict letter thereof should be disregarded.” Given the ambiguity of the statute and the clear purpose of the Legislature to exempt religious property from property taxation, we urge reconsideration of the application of this statute to our congregation, especially given the draconian outcome.

(The only case we have discovered involving a religious entity’s purchase of property from another religious entity is In re Wesleyan Education Center, 68 N.C. App. 742, 316 S.E. 2d 87 (1984), which held that a religious purchaser which had listed its new property should have filed an application for exemption within the time limit. But In re Wesleyan specifically distinguished cases in which a purchaser has not listed its property, and the Kehillah did not list its property. Please see No. 2 below)

(2) The Kehillah Did Not "List" the Property and Therefore NCGS 105-282.1(c), Which Does Not Have An End-of-the-Tax-Year Deadline for Exemption Applications, Is Applicable.

NCGS 105-282.1(c) provides in part:

When an owner of property that may be eligible for exemption or exclusion neither lists the property nor files an application for exemption or exclusion, the assessor or the Department of Revenue, as appropriate, shall proceed to discover the property. If, upon appeal, the owner demonstrates that the property meets the conditions for exemption or exclusion, the body hearing the appeal may approve the exemption or exclusion.

The Kehillah did not “list” its property in 2002. In fact, the Kehillah still possesses the 2002 form for listing the property. The congregation did not send in the “listing” form because its understanding was that the exemption continued and it need not file *any* papers regarding its property taxes, an understanding confirmed by the Assessor’s repeated description of the property as a “church lot.”

In In re Wesleyan Education Center, the North Carolina Court of Appeals upheld the North Carolina Property Tax Commission’s conclusion that NCGS 282.1(c), which does *not* have the calendar year time limitation of subsection (a1), allows an appeal of exemption status *if the taxpayer has failed to list his property*. Over the protestations of the plaintiff, which had listed its property, the Court specifically upheld the Commission’s distinction between a taxpayer who has listed its property and one who has not:

“Taxpayer here listed its property during the 1982 listing period... The property was therefore included in the tax base.... Allowing removal of a taxpayer’s listed property from the tax base ... would clearly jeopardize the county’s budget.... When an owner of property who is required to file an application for

exemption or exclusion fails to do so, the tax supervisor shall proceed to discover the property.... [A]n owner of discovered property which meets the conditions for exemption is allowed an exemption after the listing period, because his unlisted property was never included in the county's tax base."

In the current case, the Kehillah did not list its property, which suggests that, under NCGS 105-282.1(c), it may even now appeal its exemption status.

(3) The Kehillah Never Received Notice That the Exempt Status Reflected in the First 2002 Mailing from the Assessor Was Being Withdrawn.

It is noteworthy that, as the Court of Appeals points out in In re Wesleyan, the County Tax Supervisor in that case had specifically notified the taxpayer within the tax year that its property was no longer considered tax exempt. The Kehillah was never provided such notice.

This lack of notice itself may be sufficient basis for returning the 2002 assessment or at least for allowing submission of a 2002 exemption application beyond the end of that year. The first 2002 tax mailing received by the Kehillah stated a January 2002 "assessed value" amount that clearly indicated a then-current exemption. (The Kehillah had owned the property since August 2001.) The second mailing stated a "true market value" dollar figure much above the figure given in the first mailing. Although the second mailing made no reference whatsoever to exemption, we now know that this "market value" figure was intended to reflect a change in exemption status. But the Court of Appeals in In re Appeal of Church of the Creator, 102 N.C. App. 507, 402 S.E. 2d 874 (1991) held that a taxpayer whose property was removed from tax exempt status should be given notice of the loss of exemption *and the notice must be provided soon enough to enable the taxpayer to file a new application for exemption*. In accordance with In re Church of the Creator, and given that the Assessor's Office's mailings indicated to the Kehillah months after it became the property owner that the property remained in an exempt status, we believe the Kehillah should now be allowed to apply for and receive a 2002 exemption.

Additionally, on the matter of notice, we note that NCGS 105-317 states that in preparation for revaluation of property, it is the duty of the assessor to see that "[n]otice is given in writing to the owner that he is entitled to have an actual visitation and observation of this property to verify the accuracy of property characteristics..." Had the Kehillah received such notice before the April 2002 reappraisal, it could have ensured that the Assessor was aware of the religious use of the property. (NCGS 105-317 makes reference specifically to scheduled general reappraisals under NCGS 105-286, whereas the reappraisal of the Kehillah property in early 2002 apparently was an off-year reappraisal governed by NCGS 105-287; however, NCGS 105-287 states that off-year reappraisals shall be made in accordance with the same standards and rules as general reappraisals.)

We note that the website of the Orange County Assessor states that, in performing revaluations, “[c]ontacts have been made with property owners... all for the purpose of staying informed and knowledgeable of any factors that have an impact on property values.” No such contact was made in the case of the Kehillah.

In summary, we believe the law supports our argument that the Kehillah should have been notified during 2002 that the tax exempt status of the property might be withdrawn, and lacking such notice, should have been given an opportunity to apply for tax exemption and/or to appeal its tax status once its exemption status was clarified in 2003.

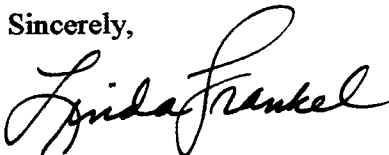
Conclusion

Imposing a tax bill of \$25,000 on the Chapel Hill Kehillah places a huge burden on a fledgling religious congregation. The property now utilized by the Kehillah was exempt from property taxation for many years prior to 2002 and has been declared exempt again as of 2003 and into the future. The County has not relied upon this property to be part of its tax base. There is no question as to the property’s continuing religious use, including during 2002. To assess property taxes upon this one religious entity during this one year, a year when the property was used for religious purposes just as assuredly as in the years before and after, seems manifestly unfair and legally questionable.

The Kehillah hopes that the review of these issues will lead to an equitable resolution. We assume that both sides would like to avoid unnecessary costs and publicity in bringing this matter to a satisfactory conclusion. We believe you will agree that it is unfair for our congregation, unique among the religious congregations of Orange County, to be forced to carry a disproportionate tax burden.

Thank you for your attention. I may be reached through the office of the Chapel Hill Kehillah at 942-8914.

Sincerely,



Linda J. Frankel

President

The Chapel Hill Kehillah

Cc: Orange County Attorney
Chair, Orange County Commissioners
Mayor, Town of Chapel Hill

IN SHADED AREAS
TAX OFFICE USE ONLY

ORANGE COUNTY **10**

IMPORTANT: THIS FORM IS NOT FOR LISTING BUSINESS PERSONAL PROPERTY
OFFICE HOURS 8:00 - 5:00 MONDAY - FRIDAY
HILLSBOROUGH MEBANE DURHAM CHAPEL HILL EXTENSION BUS 1493
919-732-8181 336-227-2031 919-688-7331 919-967-9251 2100
Direct Dial 919-245-2100

REAL AND PERSONAL PROPERTY
LISTING AS OF JANUARY 1 2002
AGE

251706

ACCOUNT NUMBER	TOWNSHIP	RC
251706	CHAPEL HILL	22

MAP REFERENCE	REAL PROPERTY DESCRIPTION	ACRES/LOT	ASSESSED VALUE
7.71 C. 11	#B & CHURCH LOT CHAPEL HILL	A2 19	207235

PARCEL IDENT. NO.	TRACT	IF THIS IS RENTAL PROPERTY WHICH YOU OWN, LIST THE VALUE OF APPLIANCES AND OTHER PROPERTY YOU PROVIDE FOR YOUR TENANTS.	HOMESTEAD EXEMPT.
9788-51-0886	735095		

LIST BELOW ALL MOBILE HOMES, BOATS AND MOTORS, JET SKIS, AIRCRAFT, AND ANY UNLICENSED AUTOMOBILES, TRUCKS, TRAILERS, CAMPERS AND MOTORCYCLES.

ITEM TYPE	YEAR	MAKE	MODEL/STYLE	VEHICLE ID. NUMBER	YEAR PURCHASED	SIZE/LENGTH	TAX OFFICE USE

EMPLOYER	LL	ADDITIONAL SPACE ON BACK IF NEEDED PLEASE MAKE MAILING ADDRESS CORRECTIONS IF NEEDED	GRAND TOTAL
----------	----	-----------------------------------------------------------------------------------------	-------------

SPOUSE'S EMPLOYER _____ HOME PHONE _____

SOCIAL SECURITY NO. (Optional) _____ WORK PHONE _____

SPOUSE'S SOCIAL SECURITY NO. (Optional) _____

*****AUTO**5-DIGIT 27514 20979 T66:129
 CHAPEL HILL KEHILLAH
 1200 MASON FARM RD
 CHAPEL HILL NC 27514-4841

ORANGE COUNTY ASSESSOR'S OFFICE
P.O. BOX 8181
HILLSBOROUGH, NORTH CAROLINA 27278

DATE / /
PLEASE COMPLETE THE BACK

PLEASE SIGN BELOW

UNDER THE PENALTIES PRESCRIBED BY LAW I HEREBY AFFIRM THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS LISTING INCLUDING ANY ACCOMPANYING STATEMENTS IS TRUE AND COMPLETE.
SIGNATURE OF OWNER _____

--- DETACH HERE ---

Why is Orange County mailing these forms?
 North Carolina General Statutes require all property owners in North Carolina to list their taxable real and personal property for the purpose of taxation in January of each year. Failure to do so will result in a 10% late list penalty applied against personal property listed after January 31. As a courtesy to the citizens of Orange County the Tax Assessor's office is notifying our citizens of their responsibility to list property. This abstract form will also serve to notify our citizens of their current valuation as well as exemptions such as homestead or disability.

Do you have to return this form to Orange County?
 You must mail this form back if you have new construction, personal property (mobile homes, boats, boat motors, jet skis, airplanes, unlicensed motor vehicles), if you are applying for an exemption, or if you have a name or an address change. (See information about listing personal property below.)
***SOCIAL SECURITY NUMBERS:** The disclosure of the social security number is voluntary. This number is needed to establish the identification of individuals. The authority to require this number for the administration of a tax is given by United States Code Title 42, Section 405(c)(2)(C)(i) and N.C. G.S. 105-309.

WHAT SHOULD BE LISTED?
REAL PROPERTY
 If you own real estate, the information provided above includes the map reference, the size of the parcel and the value assessed for tax purposes. The assessed value should include the value of the land and the value of any structures, including homes, barns, outbuildings, etc. Revaluations are conducted in Orange County every four years. The most recent revaluation was 2001. If you disagree with the assessed value and would like to file an appeal please contact this office by March 1, of the current year.
 On the reverse side of this form please indicate in the appropriate section any renovations, or new construction of any kind, including new homes, garages, barns, outbuildings etc. List any type construction, whether or not a building permit was required. Indicate what percent of the construction was complete as of January 1. You will be taxed on what existed on January 1, of the current year. You will receive a valuation notice from our office prior to the end of March, indicating the assessed value for any new construction. If you disagree with the assessed value you will have 30 days from the date of the notice to file an appeal with our office.

PERSONAL PROPERTY
 You are required to list any taxable personal property in the space provided above, excluding business personal property or farm equipment used for the production of income, which is to be listed on a separate business form. Also, motor vehicles with current license tags are not to be listed on this form. You will receive a separate bill for licensed vehicles when the vehicle is purchased or registered each year.

The following types of personal property should be listed: Singlewide mobile homes, boats and motors, jet skis, aircraft, campers, and any unlicensed motorcycles, automobiles, trucks, or trailers. Additional space is provided on the reverse side of this form if needed.



11

ORANGE COUNTY TAX ASSESSOR
P O BOX 8181
HILLSBOROUGH, N. C. 27278

NOTICE OF VALUE CHANGE
PIN # 9788510886

04/12/2002
TRACT # 735095

7.71.C.11

2002 APPRAISAL \$1,534,197

The above referenced property has been appraised by the Orange County Tax Assessor's Office for the 2002 tax year and is a result of any new construction, alterations or 2002 appeals. North Carolina law requires this appraisal to be 100% of the true market value as of January 1. If you feel the above appraisal is not a fair and equitable value, the NC General Statute allows you the opportunity to meet with the Board of Equalization and Review. You must make written request within 30 days of the date of this notice to the Board of E&R at the above address. It is recommended that you be present for the hearing, as you will be required to offer evidence of your appeal.

T
O

CHAPEL HILL KEHILLAH
1200 MASON FARM RD
CHAPEL HILL NC 27514





County of Orange
 Jo Roberson, Tax Collector
 P.O. Box 8181
 Hillsborough, NC 27278
ADDRESS SERVICE REQUESTED

(12)

Phone: (919) 245-2725
 (919) 245-2726
 (919) 245-2732
 Fax: (919) 644-3332
 Email: jrober@co.orange.nc.us
All part payments or correspondence should be sent to the above address

PROPERTY TAX BILL
IMPORTANT - PLEASE READ FRONT AND BACK OF NOTICE CAREFULLY

To pay by Credit Card call 1-888-272-9829 the jurisdiction code # 4311 will be required, or you may access the Internet at: www.co.orange.nc.us/revenue and click on the "Payment Options" icon.
 There is a convenience fee charged in addition to the amount of tax you pay. The fee is charged by the vendor providing this service.
"You Count in Orange County"

CURRENT BILL DUE BY SEPTEMBER 1, 2002
PAST DUE AFTER JANUARY 6, 2003

21177 1 AV 0.278
 CHAPEL HILL KEHILLAH 85 21177
 1200 MASON FARM RD
 CHAPEL HILL NC 27514-4841

OFFICE INFORMATION

Government Services Center
 200 S. Cameron Street, Hillsborough, NC
 8:00 a.m. - 5:00 p.m. Monday-Friday

Phone: (919) 245-2725 or (919) 245-2728
 Fax: (919) 644-3332

Email: jrober@co.orange.nc.us

PROPERTY IDENTIFICATION AND VALUE INFORMATION

TRACT NUMBER	P.I.N. (Parcel Identification)	MAP	PROPERTY DESCRIPTION	LOT ACRE	
735095	9788-51-0886	7.71.C.11	#B & CHURCH LOT CHAPEL HILL	A2.19	
ACCOUNT NUMBER	PERSONAL PROPERTY VALUE	REAL PROPERTY VALUE	HOMESTEAD VALUE	TOTAL ASSESSED VALUE	TAX YEAR
251706		1534197		1534197	2002

BILLING INFORMATION AND CALCULATION

JURISDICTION/ TYPE TAX	CODE	TAX RATE PER \$100 VALUE	TAX AMOUNT	MESSAGES
COUNTY	G0	.83	12733.84	
CHAPEL HILL CITY	G2	.553	8484.11	
CHAPEL HILL SCHOOL	CH	.192	2945.66	
TAX YEAR	BILL NUMBER	LATE LIST PENALTY	TOTAL AMOUNT DUE	DUE DATE
2002	70933		24163.61	SEPTEMBER 1, 2002
				PAST DUE DATE AFTER JANUARY 6, 2003

DETACH AND RETAIN UPPER PORTION FOR YOUR INCOME TAX PURPOSES

TRACT NUMBER	ACCOUNT NUMBER	YEAR	BILL NUMBER	TOTAL AMOUNT DUE
735095	251706	2002	70933	24163.61

CURRENT BILL DUE BY SEPTEMBER 1, 2002
PAST DUE AFTER JANUARY 6, 2003

AMOUNT ENCLOSED \$

PLEASE RETURN THIS PORTION WITH PAYMENT

TO CHANGE YOUR MAILING ADDRESS
 PLEASE FILL IN YOUR NEW ADDRESS AT THE RIGHT

ADDRESS: _____
 CITY: _____ STATE: _____ ZIP: _____

MAKE CHECK PAYABLE & REMIT TO

CHAPEL HILL KEHILLAH
 1200 MASON FARM RD
 CHAPEL HILL, NC 27514

ORANGE COUNTY TAX COLLECTOR
 PO BOX 580453
 CHARLOTTE NC 28258-0453



2002000709339024163619453

