



The Ethical Challenge

Give The Rabbi A (Tax) Break:

Taxes for Clergy in Law and Halachah

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Vignette 1- Jeanette, an ordained Lutheran minister, works as a fundraiser for her local church. Can she deduct her rent and utilities expenses?

History of Tax Exemptions for Clergy

1. Judge Michael Brennan, Opinion in United States Court of Appeals For the Seventh Circuit, Nos. 18-1277 & 18-1280

The facts before us are not in dispute. The Sixteenth Amendment was ratified in 1913, authorizing Congress to levy an income tax. Congress imposed a federal income tax that same year and has levied one in various forms since. As a result, Congress and the Treasury Department needed to define taxable “income.” A rule defining income that survives today in the Internal Revenue Code is the “convenience-of-the-employer” doctrine. Under that doctrine, housing provided to employees for the convenience of their employer is exempt from taxable income. Early examples of exclusions under the doctrine include housing provided to sailors living aboard ships, workers living in camps, and hospital employees. But the convenience-of-the-employer doctrine was not made available to ministers. In 1921, the Treasury Department announced ministers would be taxed on the fair rental value of parsonages provided as living quarters. O.D. 862, 4 C.B. 85 (1921). Congress reacted quickly and enacted a statute to exclude church-provided parsonages from the taxable income of ministers. The Treasury Department interpreted this statute to apply only to housing provided in-kind; cash housing allowances were included in income. I.T. 1694, C.B. II-1, at 79 (1923). This continued for decades until in the 1950s several ministers successfully challenged the limitation to in-kind housing. Congress then enacted 26 U.S.C. § 107, which provides:

In the case of a minister of the gospel, gross income does not include— (1) the rental value of a home furnished to him as part of his compensation; or (2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home ...

Section 107(1) reauthorized the in-kind parsonage exemption in place since the 1920s. Section 107(2) authorized the IRS to also exempt cash allowances from ministers’ taxable income.

Who qualifies as clergy under Canadian Tax Law?

2. Income Tax Act (Revised Statutes of Canada, 1985, c. 1 (5th Supp.))

8 (1) In computing a taxpayer’s income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

(c) where, in the year, the taxpayer

- (i) is a member of the clergy or of a religious order or a regular minister of a religious denomination, and
- (ii) is
 - (A) in charge of a diocese, parish or congregation,
 - (B) ministering to a diocese, parish or congregation, or
 - (C) engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination,

the amount, not exceeding the taxpayer’s remuneration for the year from the office or employment, equal to

- (iii) the total of all amounts including amounts in respect of utilities, included in computing the taxpayer’s income for the year under section 6 in respect of the residence or other living

accommodation occupied by the taxpayer in the course of, or because of, the taxpayer's office or employment as such a member or minister so in charge of or ministering to a diocese, parish or congregation, or so engaged in such administrative service, or

- (iv) rent and utilities paid by the taxpayer for the taxpayer's principal place of residence (or other principal living accommodation), ordinarily occupied during the year by the taxpayer, or the fair rental value of such a residence (or other living accommodation), including utilities, owned by the taxpayer or the taxpayer's spouse or common-law partner, not exceeding the lesser of...

3. U.S Electronic Code of Federal Regulations, Title 26 CFR 1.1402(c)-5 Ministers and members of religious orders

[https://www.law.cornell.edu/cfr/text/26/1.1402\(c\)-5](https://www.law.cornell.edu/cfr/text/26/1.1402(c)-5)

(2) Except as provided in paragraph (c)(3) of this section, service performed by a minister in the exercise of his ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination. The following rules are applicable in determining whether services performed by a minister are performed in the exercise of his ministry:

(i) Whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his church or church denomination.

(ii) Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creation of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for income tax purposes.

(iii) If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his ministry whether or not it is performed for a religious organization.

Vignette 2- David is an ordained Rabbi, who balances his time leading his local synagogue while running his own law firm. Can David deduct his hydro, and gas bills from his residence from his taxable income? Would he be exempt from taxes under Jewish law?

Taxes for Clergy in Halacha: Are Rabbis exempt from Taxes?

4. Talmud, Bava Batra 7b- 8a (William Davidson Edition)

מתני' כופין אותו לבנות בית שער ודלת לחצר רבן שמעון בן גמליאל אומר לא כל החצרות ראויות לבית שער כופין אותו לבנות לעיר חומה ודלתים ובריה רשב"ג אומר לא כל העיירות ראויות לחומה

MISHNA: The residents of a courtyard can compel each inhabitant of that courtyard to financially participate in the building of a gatehouse and a door to the jointly owned courtyard. Rabban Shimon ben Gamliel disagrees and says: Not all courtyards require a gatehouse, and each courtyard must be considered on its own in accordance with its specific needs. Similarly, the residents of a city can compel each inhabitant of that city to contribute to the building of a wall, double doors, and a crossbar for the city. Rabban Shimon ben Gamliel disagrees and says: Not all towns require a wall.

בעא מיניה רבי אלעזר מרבי יוחנן כשהן גובין לפי נפשות גובין או דילמא לפי שבח ממון גובין אמר ליה לפי ממון גובין ואלעזר בני קבע בה מסמרות איכא דאמרי בעא מיניה רבי אלעזר מרבי יוחנן כשהן גובין לפי קירוב בתים הן גובין או דילמא לפי ממון גובין אמר ליה לפי קירוב בתים הן גובין ואלעזר בני קבע בה מסמרות

רבי יהודה נשיאה רמא דשורא אדרבנן אמר ריש לקיש רבנן לא צריכי נטירותא דכתיב(תהלים קלט, יח) אספרם מחול ירבון אספרם למאן אילמא לצדיקים דנפישו מחלא השתא כולהו ישראל כתיב בה (בראשית כב, יז) כחול אשר על שפת הים צדיקים עצמם מחול ירבון אלא

הכי קאמר אספרם למעשיהם של צדיקים מחול ירבון וקל וחומר ומה חול שמועט מגין על הים מעשיהם של צדיקים שהם מרובים לא כל שכן שמגינים עליהם

Rabbi Elazar asked Rabbi Yoḥanan: When the residents of the city collect money to build a wall, do they collect based on the number of people living in each house, or perhaps they collect based on the net worth of each person? Rabbi Yoḥanan said to him: They collect based on the net worth of each person, and Elazar, my son, you shall fix nails in this, i.e., this is an established *halakha*, and you must not veer from it. There are those who say that Rabbi Elazar asked Rabbi Yoḥanan: When they collect money to build a wall, do they collect based on the proximity of the houses to the wall, so that those people who live closer to the wall pay more? Or perhaps they collect based on the net worth of each person. Rabbi Yoḥanan said to him: They collect based on the proximity of the houses to the wall, and Elazar, my son, you shall fix nails in this.

It is related that Rabbi Yehuda Nesia once imposed payment of the tax for the wall even on the Sages. Reish Lakish said to him: The Sages do not require protection, as it is written: “How precious are your dear ones to me, O God...If I should count them, they are more in number than the sand” (Psalms 139:17–18). If I should count whom? If we say this is referring to the righteous, and the verse is saying that they are greater in number than the grains of sand, this is difficult. Now if it is written about all of Israel: “As the sand which is upon the seashore” (Genesis 22:17), can the righteous themselves, who are a part of Israel, be greater in number than the grains of sand? How can they possibly outnumber the grains of sand upon the seashore? Rather, this is what the verse is saying: If I should count the deeds of the righteous, they are greater in number than the grains of sand. And it follows by an *a fortiori* inference: If the grains of sand, which are fewer in number, protect the shore from the sea, barring it from flowing inland (see Jeremiah 5:22), do not all the more so the deeds of the righteous, which are greater in number, protect them?

רב נחמן בר רב חסדא רמא כרגא ארבנא א"ל רב נחמן בר יצחק עברת אדאורייתא ואדנביאי ואדכתובי ...

It is similarly related that Rav Naḥman bar Rav Hisda once imposed payment of the poll tax [*karga*] even on the Sages. Rav Naḥman bar Yitzḥak said to him: You have transgressed the words of the Torah, the Prophets, and the Writings...

אמר רב יהודה הכל לאגלי גפא אפילו מיתמי אבל רבנן לא צריכי נטירותא הכל לכריא פתיא אפילו מרבנן ולא אמרן אלא דלא נפקי באכלוזא אבל נפקי באכלוזא רבנן לאו בני מיפק באכלוזא נינהו:

Rav Yehuda says: All of the city’s residents must contribute to the building and upkeep of the city gates [*le’aglei gappa*], and for this purpose money is collected even from orphans. But the Sages do not require protection and are therefore exempt from this payment. All of the city’s residents must contribute to the digging of cisterns [*lekarya patya*], and for this purpose money is collected even from the Sages, since they too need water. The Gemara comments: And we said this only when the people are not required to go out en masse [*be’akhluzā*] and do the actual digging, but are obligated merely to contribute money for that purpose. But if the people are required to go out en masse and actually dig, the Sages are not expected to go out with them en masse, but rather they are exempt from such labor.

5. Ezra 7:24 (JPS Tanakh 1985)

וּלְכֶם מְהוֹדְעֵי דֵי כָל־כְּהֻנָּא וְלִנְיָא וְלִנְיָא זְמָרָא תְרַעֲיָא נְתִינְיָא וּפְלִחֵי בֵּית אֱלֹקָא דְגָּהּ מְנַדְּהָ בְּלוֹ וְהַלֵּךְ לָא שְׁלִיט לְמַרְמָא עֲלֵיהֶם:

We further advise you that it is not permissible to impose tribute, poll tax, or land tax on any priest, Levite, singer, gatekeeper, temple servant, or other servant of this House of God.

6. Rabbi Moshe Nachmanides (12th century Spain) on Bava Batra 8a

ונראה שאין תלמידי חכמים פטורין מעשורי תבואתם ולא מכסף גלגלתם אלא כשהמלך מטיל על בני העיר ליתן כך וכך בפדיון גלגלתם וכך במעשר תבואתם והם יפסקו ביניהם, לפי שיכולין תלמידי חכמים לומר לא הטיל המלך עלינו כלום אלא בשבילכם, אבל אם אמר המלך ליתן כל אחד ואחד כסף גלגלתו אין עמי הארץ פורעין בשביל תלמידי חכמים

It appears that Torah Scholars are only exempt from tithing their produce, and [personal taxes] when the king requires all inhabitants of the city to [collectively] pay a sum for their population and for the tithing of their produce and they settle the amount between them. For, the Torah scholars can say: “the King only levied a tax on

us because of you". However, if the king instructs each person to pay their own taxes, the ordinary people don't pay for Torah Scholars.

7. Rabbi Meir Abulafia (12th century Spain), Yad Ramah Bava Batra 1:82

נקטינן השתא... שכל מיני מסים וארנוניות ותשחורות בין קבועין בין שאינן קבועין אין תלמידי חכמים חייבים לסייע בהן את הצבור כל עיקר... ואפילו המס הקצוב על כל איש ואיש בפני עצמו הרי הצבור חייבין לפרוע משלהן כדי המס הקצוב על תלמידי חכמים כדי לפטרן, דהא כרגא דהוא כסף גולגתא אקרקה גברי מנח כדאמרינן בכמה דוכתי וקאמרינן בהדיא דרבנן פטירי ואי דלא משלמי צבור עליהו מדידהו היכי יכלינן למפטרינהו מבי גזא דמלכא, אלא לאו ש"מ דמהייבי צבורא למפרע עלייהו ממונא דנפשיהו לגבי גזא דמלכא. ואפילו היו עשירים שבישראל הציבור חייבין לפרוע בעבורן **שלא מפני עניותן נפטרו אלא מפני תורתן נפטרו**. וכן כל מיני מסין שהצבור מטילין לבנין החומות ולהגפת הדלתות ושאר שמירת העיר אין תלמידי חכמים חייבין בהן כל עיקר.

אלא מיהו הני מילי בתלמידי חכמים העוסקים בתורה תדיר כפי יכולת כל אחד ואחד ומקימין מצות והגית בו יומם ולילה כפי כחן... אבל תלמידי חכמים שאין עוסקין בתורה תדיר כפי כחן ולא דיין לעסוק במלאכתן כדי למצוא פרנסתן ופרנסת אנשי ביתן אלא שהם יגיעים להעשיר ומבטלין את התורה כדי לקבץ ממון הרבה הרי אלו חייבין בכל חיובי הצבור. וכן תלמידי חכמים המזולזלים במצות ואין יראת שמים על פניהם הרי אלו כקלים שבצבור לא אמר הכתוב אלא כל קדושיו בידך והן הן שאין פורענות באה בשבילם יצאו אלו שמחללים שם שמים בגלוי

We can conclude from here... that all types of taxes, levies, and duties, whether they are set or not, Torah scholars are not obligated to assist the congregation with them at all... Even for a set tax on each person, the community needs to pay the set amount for the Torah Scholars in order to exempt them. For a *kraga* is a personal tax as we have said many places, and we have said explicitly that Rabbis are exempt. For if the community doesn't pay for them, how can we exempt from the king's treasury? Rather, we can infer that the community needs to pay for them from their own money to the treasury. Even if they are among the wealthy of Israel, the community needs to pay for them. **For they were exempted for their Torah, not their poverty.** Similarly, and type of taxes which the community charges for building walls, or gates, and other types of security, Torah Scholars aren't obligated in them at all.

However, this only applies to Torah Scholars **who engage in Torah study constantly as best as they can**, and they fulfill the mandate of "You shall contemplate it day and night" as best as they can. But Torah Scholars, that don't constantly engage in Torah study, and they don't suffice with working to earn a livelihood for themselves and their families but rather toil to become wealthy and desist from Torah study in gather a lot of money, these people are obligated in all communal obligations. Similarly, **Torah Scholars who belittle mitzvot and have no awe of heaven upon their faces, they are [viewed] as the dregs of society.** The Torah said: "All His holy ones are in your hand", and these are the ones for whom [the community] suffers no punishment. This excludes those who desecrate the name of heaven publicly.

8. Rabbi Yosef Karo (16th Century Israel), Code of Jewish Law, Yoreh Deah 243:1-3

תלמידי חכמים לא היו יוצאין בעצמם עם שאר העם לעשות בבנין ובחפירות העיר וכיוצא בזה, שלא יתבזו בפני עמי הארץ, וכיון שהם פטורים אפילו אחרים במקומם אין שוכרין.

במה דברים אמורים, כשכל אדם יוצא בעצמו. אבל אם אין יוצאין בעצמם, אלא שוכרים אחרים במקומם או גובים ממון מבני העיר לעשותו, אם דבר שצריך לחיי האדם כגון בארות מים וכיוצא בהם, חייבים לתת חלקם... אבל דבר שהוא צריך לשמירת העיר, כגון חומות העיר ומגדלותיה. ושכר השומרים, לא היו חייבין לתת להם כלום, שאין צריכין שמירה, שתורתן שמירתם. ולכן היו פטורים מכל מיני מסים, בין מסים הקצובים על כל בני העיר, בין מס שהוא קצוב על כל איש לבדו, בין הקבועים בין שאינם קבועים, וחייבים בני העיר לפרוע בשבילם אפילו הקבועים על כל איש ואיש... ואין חילוק אם הת"ח עשיר או עני.

ודוקא תלמידי חכמים שתורתם אומנותם, אבל אין תורתם אומנותם, חייבים. ומיהו אם יש לו מעט אומנות, או מעט משא ומתן להתפרנס בו כדי חייו ולא להתעשר, ובכל שעה שהוא פנוי מעסקיו חוזר על ד"ת ולומד תדיר, נקרא תורתו אומנתו. הגה: ואין חילוק בין שהוא תופס ישיבה או לא, רק שהוא מוחזק לת"ח בדורו שיוודע לישא וליתן בתורה, ומבין מדעתו ברוב מקומות התלמוד ופירושיהו ובפסקי הגאונים, ותורתו אומנותו כדרך שנתבאר. (ת"ה סימן שמ"ב). ואף על גב דאין בדורינו עכשיו חכם לענין שיתנו לו ליטרא דדהבא אם מביישו, מ"מ לענין לפטרו ממס מקילין להם בזה, רק שיהא מוחזק לת"ח, כמו שנתבאר. (שם סימן שמ"א). ומ"מ יש מקומות שנהגו לפטור ת"ח ממס, ויש מקומות שנהגו שלא לפטרן (שם שמ"ב).

ותלמיד חכם המזולזל במצות ואין בו יראת שמים, הרי הוא כקל שבצבור.

Torah Scholars would not go out on their own with the rest of the people to participate in the building and excavations of the city and so on, lest they be despised before the peoples of the land, and since they are exempt they don't even hire others in their place.

This was only said, when each person goes out on his own. But if they do not go out on their own, but hire others in their place or collect money from the people of the city to do it, if it is something that's a necessity of human life such as water wells and the like, they must give their share ... but if it's a security need, such as city walls and towers, and the wages of the guards, they are not obliged to give them anything, for they they need no guarding, because Torah is their security. And they are therefore exempt from all kinds of taxes, whether the taxes imposed on all the people of the city, or the tax which is imposed on every man alone, whether the permanent or the non-permanent, and the people of the city must pay for them even for the fixed taxes on every person...It makes no difference whether they are poor or wealthy.

This only applies to Torah scholars whose Torah is their livelihood, but if their Torah isn't their livelihood, they are liable. However, if they have a small occupation, or business which they use to sustain themselves and not to become wealthy, and they use all their free time to return to Torah learning, that is called "his Torah is his livelihood.

Remah: It makes no difference whether he has a yeshiva or not, only that he is considered a Torah scholar in his generation that knows how to properly converse in Torah and understands with his knowledge most parts of the Talmud and the decisions of the Geonim, and his Torah is his livelihood as we have explained. Even though in our generations we have no Torah Scholars in terms of paying them a litra of gold if one embarrasses them, nevertheless we are lenient in terms of exempting them from taxes, as long as they are considered Torah Scholars.

However, they are places where the custom is to exempt Torah Scholars from taxes and there are places where the custom is not to exempt

A Torah Scholar who denigrates religious observance and does not have the awe of heaven is the same as a lowly member of society.

9. Rabbi Eliezer Waldenberg (20th century Israel), Tzitz Eliezer 2:25

ונראה לי להביא סמך לזה דלאו דווקא זמן מורה הוראה, מדברי הגמ' בנדרים (ד' ס"ב ע"ב) שאומר רבא בלשון: שרי ליה לצורבא מרבנן למימר לא יהיבנא אכרגא וכו'. וצורבא מרבנן היינו פחות מרבנן וכמו שמפרש רש"י בתענית (ד' ד' ע"א) דצורבא מרבנן הוא בחור חריף, ותלמיד חכם זקן לא קרי צורבא אלא ההוא מרבנן קרי ליה, והיינו שאפילו עדיין לא הגיע לדרגת רבנן בכל זאת מכיון שנושא ונותן בפלפולא של תורה ג"כ פטור...

I can bring a proof that [to qualify] one doesn't need to reach the stage of providing halachic instruction from the Talmud in Nedarim 62b in which Rava says: "A disciple of the Rabbis can say: "I am not paying taxes...". "A disciple of the Rabbis" is less than a Rabbi as Rashi explained in Taanit 4a, that a disciple of the Rabbis is young and sharp, and an elderly Torah Scholar isn't called "disciple" but "one of the rabbis". That shows that even if he hasn't reached the status of "Rabbi" since he is engaged in the Torah analysis he is exempt

(יב) ותלמיד חכם שמתפרנס מתורתו שנוטל שכר בטלה, אי מיקרי תורתו אומנותו ופטור או לא? הנה השיטה מקובצת בב"ב (ד' ח' ע"א) מביא שמצא בשם הרמב"ן, דהחכמים הלומדים עם התלמידים בשכר אין מן הדין לפוטרים מן המס כיון דבשכר הם לומדים. ולפי"ז צריך להיות לכאורה הדין לדעת הרמב"ן שה"ה גם תלמידי חכמים שנוטלים שכר בטלה עבור עסקם בהוראה שג"כ לא יהיו פטורין מן המס מכיון שגם הם עושים זאת תמורת שכר...

אבל יש לחלק שחכמים הלומדים עם התלמידים בשכר שמיירי הרמב"ן, הוא באופן שכל לימודם במשך היום הוא בשכר, ולכן אין מן הדין לפוטרים מכיון שיוצא סוף סוף שכל מה שלומדים הוא תמורת שכר, אבל משא"כ בת"ח שיושב כל היום ולומד לעצמו לשם לימוד תורה לשמה ונוטל מהקהל שכר בטלה לא עבור לימוד כי אם עבור הוראתו באו"ה... בזה י"ש שפיר שגם הרמב"ן מודה שפטור באופן כזה מכיון שהא עצם לימודו הוא לא תמורת שכר.

וראיתי בשט"מ בב"מ (ד' ק"ח ע"א) שמביא ... דכיון שתורתו אומנותו אף על פי שמתפרנס ממנה בשכר בטילתו ממלאכות אחרות אפ"ה פטרינן ליה מהנך מילי... הרי מפורש שלא מגרע כלל ממה שמתפרנס ממנה בשכר בטילתו ממלאכות אחרות, ופטרינן ליה מהמסים מכיון שמהת תורתו אומנותו.

Q. Is a Torah Scholar who receives “idle pay” from Torah considered [to have] Torah as a livelihood?

The *Shitah Mikubetzet* brings in the name of Nachmanides that sages who study with students for a reward shouldn't by law be exempt from taxes because they learn for pay. Based on this, the law should be according to Nachmanides that the same applies to Torah Scholars who take idle pay for their engagement with instruction that they also shouldn't be exempt from pay since they also do this for a salary.

However, one can draw a distinction, between sages who teach students for a salary as Nachmanides discusses, in which their teaching the entire day is for a salary. Therefore, it's not appropriate by law to exempt them for in the end, all they learn is in exchange for a salary, which is not the case with Torah Scholars who sit all day and learn for the sake of Torah study, and take money from the congregation not for their learning but for their rulings in ritual law. For this, one can certainly suggest that even the Rambam would admit that he is exempt in this case since his actual learning isn't for pay.

And I saw in the *Shitah Mikubetzet* in Bava Metzia 108a that he brings... that since the Torah is his livelihood, even though he is supported in exchange for being idle from other jobs, nevertheless we exempt him from this things. It is explicit that getting paid for being idle from other jobs doesn't detract at all and we exempt him from taxes since Torah is his livelihood.

Vignette 3- Jacob works as community educator. He is paid by the community to give Torah classes and run educational programs throughout the community. However, he isn't connected to any particular synagogue. Can he claim the clergy residence deduction?

10. Lichtman v. The Queen, 2017 TCC 252 (CanLII), <<http://canlii.ca/t/hphxf>>, retrieved on 2020-11-23

II. Appellant's Position:

The Appellants submit that they were entitled to claim the clergy residence deduction during the relevant periods because they provided Jewish religious instruction and guidance to elementary Orthodox Jewish children attending VHA, who were assembled primarily for this instruction. In leading these children in Jewish worship and instructing them in Jewish principles and values, the Appellants were ministering to a congregation. The Appellants relied on a number of cases decided by the former Chief Justice Bowman to support their argument (Appellants' Opening Statement, pages 7-8).

III. Respondent's Position:

The Respondent submits that if I accept the Appellants' argument on the interpretation of subparagraph 8(1)(c)(ii) of the *Act*, it would be inconsistent with the plain meaning of the provision, its context in the overall statutory scheme, Parliament's intention to deliberately exclude full-time teaching activities from the ambit of this provision and that it would lead to the absurd result where, unlike other Judeo-Christian denominations, any religious activities undertaken by Orthodox Rabbis would necessarily fall within the meaning of ministering to a congregation (Respondent's Written Submissions, paragraph 4)...

No Consensus on the Spirituality of Torah Education

While Torah is undoubtedly important in the life of an Orthodox Jew, the Rabbinical Court Report's assertion that Torah education is more than an intellectual pursuit and that it is in and of itself a “spiritual engagement akin to prayer or other rituals” does not hold up under close scrutiny (Rabbinical Court Report, paragraph 3.5). More specifically, the Report appears to rely on sources that have no consensus among rabbinic authorities and scholars...

On the other hand, on cross-examination, Rabbi Rosenblatt admitted that while it is customary to recite 100 blessings daily, many are achieved through daily and Sabbath prayer services as well as those blessings recited before and after such routine activities as washing one's hands, eating bread, or eating fruit and vegetables (Transcript, Vol. 3, pages 321-323).

Despite the alleged importance of blessings in the spiritual act of learning Torah, it is interesting to note that there was no evidence presented as to whether the students at the VHA actually recited a blessing before their Torah classes. However, there was evidence presented respecting the requirement for students to bring bread for lunch each day so that they could recite the blessings for bread based meals. According to Rabbi Lichtenstein, this would mean “missing the essence of Torah” and “devar Hashem”, the word of God, is then reduced to an “academic discipline” (Rabbinical Court Report, Appendix H, page 14).

In view of the facts presented, there is simply no convincing evidence that Torah education provided to students at the VHA is in and of itself a spiritual act. Like Bible studies in other religious schools, Torah education certainly has a religious dimension. However, there is no consensus that the religious dimension necessarily outweighs the academic dimension. This is particularly true in the context of a day school that offers its students a dual curriculum. Students at VHA studied in two streams: first, Judaic studies, of which Torah was a part and second, general studies. Students were subjected to tests and performance assessments in both streams. The Appellants were required to mark the performance of the students and to complete report cards. This was no different than the general studies assessments.

11. Rabbi Moses Maimonides (12th century Egypt) , Laws of Torah Study Chapter 2:6-8 (Tr. Simon Glazer)

מי שישאף לבו לקיים מצוה זו כראוי ולהיות מקמץ בכותר תורה. לא יסית דעתו לדברים אחרים. ולא ישים על לבו שיקנה תורה עם העושר והכבוד פאחת. (משנה אבות וד) "כף היא דרפה של תורה. פת במלח תאכל ומים במשורה תשתה ועל הארץ תישן וסני צער תחנה ובתורה אתה עמל". ולא עליך הדבר לגמר ולא אתה בן חורין לבטל ממנה. ואם הרבית תורה הרבית שכר. והשכר לפי הצער :

Whosoever is ambitious to establish this commandment properly and to become adorned with the crown of the Torah must not divert his thoughts to other matters, nor set his heart to acquire the knowledge of the Torah and wealth and honor simultaneously. The way leading to the knowledge of the Torah is such: "a morsel of bread with salt thou shalt eat, and water by measure thou shalt drink, upon the ground thou shalt sleep, and a burdensome life thou shalt live while thou toilest in the Torah." (Pirke Abot, 6.4; 21). Nevertheless, it is not obligatory upon thee to complete it, nor art thou free to exclude thyself from its study, for if thou hast increased thy study of the Torah thou also hast increased thy reward, as the reward is equal to the pain.

שמה תאמר עד שאקבץ ממון אחר ואקרא. עד שאקנה מה שאני צריך ואפנה מעסקי ואחזר ואקרא. אם תעלה מחשבה זו על לבך אין אתה זוכה לכתרה של תורה לעולם. אלא עשה תורתך קבע ומלאכתך עראי (משנה אבות בד) "ולא תאמר לכשאפנה אשנה שמה לא תפנה:"

Peradventure, one will say, I will interrupt my study of the Torah until I will accumulate wealth when I will again return to it, or until I will acquire sufficient substance to supply all my needs when I will retire and return back to it; if such a thought will penetrate thy heart you will never acquire the crown of the Torah. But make thy study of the Torah paramount and thy secular work incidental, and do not say, when I will be unoccupied then I will study, lest you will never be unoccupied. *Pir. Ab. 1.15; 2.5. G.*

כתוב בתורה לא בשמים היא ולא מעבר לים היא. לא בשמים היא לא בגסי הרוח היא מצויה ולא במהלכי מעבר לים היא. לפיכך אמרו חכמים משנה אבות ב"ה "לא כל המרבה בסחורה מחכים". וצווי חכמים הוי ממעט בעסק ועסק בתורה :

Holy Writ says: "It is not in heaven ... neither is it beyond the sea" (Deut. 30.12–13) it is not in heaven, that is to say, the Torah is not found among the arrogant nor is it found among the travelers beyond the sea." (Erubin, 55a). The sages, therefore said: "Not he who engages himself over-much in commerce is wise." (Pirke Abot, 2.6). The sages, moreover, commanded: "Engage thyself but little in worldly pursuits and pursue the study of the Torah" (Pirke Abot, 4.12).

ברי תורה נמשלו כמים שנגאמר (ישעיה נה א) "הוי כל צמא לכו למים". לומר לה מה מים אינם מתכנסין במקום מדרון אלא גוזליו מעליו ומתקבצים במקום אשבורן כף דברי תורה אינם נמצאים בגסי הרוח ולא בלב כל גבה לב אלא בדבא ושפל רוח שמתאבק בעפר רגלי החכמים ומסיר הפאות ותענוגי הזמן מלבם ועושה מלאכה בכל יום מעט פדי סניו אם לא היה לו מה יאכל ושאר יומו ולילו עוסק בתורה:

The words of the Torah are likened unto water, even as it is said: "Ho, everyone that thirsteth, come ye for water" (Is. 55.1), which is to teach you, even as waters do not gather in steep places, but flow by gravity and gather in a well, so are the words of the Torah, they are not found among the high spirited nor in the heart of all haughty but in the humble and meek spirited who embraces the dust of the feet of the wise and removes the passions and the

pleasures of the age from his heart and does a little work daily for his living, if he happens to be unprovided with food, and the rest of his days and his nights he pursues the study of the Torah.

12. Rambam, Laws of Teaching Torah 4:1

אין מלמדין תורה אלא לתלמיד הגון נאה במעשיו או לתם אבל אם היה הולך בדרך לא טובה מחזירין אותו למוטב ומנהיגין אותו בדרך ישרה ובודקין אותו ואח"כ מכניסין אותו לבית המדרש ומלמדין אותו

We don't teach Torah unless the student is fit and pleasing in his actions. However, if he walks a path which isn't good, we return him to the good, and lead him on the straight path. We then check him and only afterward bring him to the Study Hall and teach him

13. Rabbi Shneur Zalman of Liadi (18th century Russia), Tanya 1:5 (Chabad.org translation)

For example, when a person understands and comprehends, fully and clearly, any halachah (law) in the Mishnah or Gemara, his intellect grasps and encompasses it and, at the same time, is clothed in it. Consequently, as the particular halachah is the wisdom and will of G-d, for it was His will that when, for example, Reuben pleads in one way and Simeon in another, the verdict as between them shall be thus and thus; and even should such a litigation never have occurred, nor would it ever present itself for judgment in connection with such disputes and claims, nevertheless, since it has been the will and wisdom of the Holy One, blessed be He, that in the event of a person pleading this way and the other [litigant] pleading that way, the verdict shall be such and such— now therefore, when a person knows and comprehends with his intellect such a verdict in accordance with the law as it is set out in the Mishnah, Gemara, or Posekim (Codes), he has thus comprehended, grasped and encompassed with his intellect the will and wisdom of the Holy One, blessed be He, Whom no thought can grasp, nor His will and wisdom, except when they are clothed in the laws that have been set out for us. [Simultaneously] the intellect is also clothed in them [the Divine will and wisdom]. This is a wonderful union, like which there is none other, and which has no parallel anywhere in the material world, whereby complete oneness and unity, from every side and angle, could be attained.

14. Lichtman v. The Queen, 2017 TCC 252 (CanLII), <<http://canlii.ca/t/hphxf>>, retrieved on 2020-11-23

Conclusion:

The Appellants are not entitled to the clergy residence deduction because they do not meet the function test of “ministering...to a congregation” pursuant to paragraph 8(1)(c) of the *Act*. The Appellants cannot be considered to be “ministering” when they are teaching Judaic studies curriculum at VHA and neither can the students, gathered for religious instruction, whom they teach, be identified as a “congregation”. This conclusion is supported by the case law, a textual, contextual and purposive interpretation of the deduction, as well as the facts before me and the expert evidence.