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Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Whether a Rabbi, who is an employee of the XXXXXXXXXXXX (the "Entity"), is considered to be exclusively in full-time administrative service by appointment of a religious order.

POSITION: No.

REASONS: The Entity does not qualify as a religious order for the purpose of paragraph 8(1)(c) of the Act as it does not satisfy at least one of the six conditions necessary to qualify as a religious order.

XXXXXXXXXX

February 1, 2011

2010-038388

V. Srikanth

Dear XXXXXXXXXXXX :

Re: Clergy Residence Deduction

This is in response to your letter dated October 13, 2010, wherein you requested our views on the clergy residence deduction provided for in paragraph 8(1)(c) of the Income Tax Act (the "Act"). Specifically, you wanted our opinion on whether, as a full-time employee of the XXXXXXXXXXXX (the "Entity"), you are eligible to claim a clergy residence deduction pursuant to paragraph 8(1)(c) of the Act. You are of the view that you would qualify for the clergy residence deduction on the basis of being "a member of a religious order

engaged exclusively in full-time administrative service by appointment of the religious order."

Our Comments

Written confirmation of the tax implications inherent in actual proposed transactions is given by this Directorate only where the transactions are the subject of an advance income tax ruling request submitted in the manner set out in Information Circular 70-6R5, entitled Advance Income Tax Rulings. This Information Circular and other Canada Revenue Agency ("CRA") publications can be accessed on our website at <http://www.cra-arc.gc.ca>. If, however, the particular transactions are completed or partially completed, the enquiry should be addressed to the relevant Tax Services Office. Your request was not submitted in the format required for an advance income tax ruling request, however, as stated in paragraph 22 of IC 70-6R5, we do provide written opinions on general enquiries which are not binding and we are prepared to provide you with the following comments.

Generally, to be eligible for the clergy residence deduction, an individual must be a member of the clergy, a member of a religious order, or a regular minister of a religious denomination (the status test). When one of these conditions is met, the individual must be in charge of, or ministering to, a diocese, parish or congregation, or engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination (the function test).

Further, in order to qualify for the clergy residence deduction, pursuant to paragraph 8(1)(c) of the Act, the person must satisfy both the status and the function tests discussed below.

Status test

In order to satisfy the status test, the person must be one of the following:

- * a member of the clergy;
- * a member of a religious order; or
- * a regular minister of a religious denomination.

Paragraph 4 of Interpretation Bulletin IT-141R (Consolidated), entitled 'Clergy Residence Deduction', states that a "member of the clergy" is a person set apart from the other members of the

church or religious denomination as a spiritual leader. Priests, pastors, ministers, rabbis, imams, commended workers and other persons who have been commended, licensed, commissioned or otherwise formally or legitimately recognized for religious leadership within their religious organization may be members of the clergy.

In the given submission, you have indicated that you are an ordained orthodox rabbi. Hence, in our view, you are considered to be a member of the clergy for the purpose of the status test.

Function test

In order to qualify for the deduction, a person who has the required status must also be employed in a qualifying function. The person's function must be one that he or she is:

* in charge of, or ministering to, a diocese, parish or congregation; or

* engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination.

You are of the view that you satisfy the 'function test' by being exclusively in full-time administrative service by appointment of a religious order. You have further indicated that you have been appointed by the Entity. Accordingly, it needs to be determined if the Entity qualifies as a religious order for the purpose of the 'function test'.

With respect to the definition of a religious order, the following explanation is provided in paragraph 8 of IT-141R:

"The term "religious order" means a group of people bound by the same religious, moral and social regulations and discipline. A religious order may comprise all the members of an organization or only an identifiable group within that organization. ... Not every religious organization is a religious order. Whether or not an organization or a group of individuals within an organization is a religious order is a question of fact to be determined on a case-by-case basis. No factor predominates and each must be assigned its proper weight in the context of all the facts."

Judge Bowman has established in *McGorman et al v The Queen* (99 DTC 699 TCC), with respect to the meaning of a 'religious order', six criteria to serve as guidelines in determining

whether an organization (or a collectivity of persons therein) is a religious order, and the Canada Revenue Agency (the "CRA") has accepted these guidelines as indicated in paragraph 9 of IT-141R. These guidelines can be used to review the information provided to determine whether the Entity is a religious order. The six criteria are:

1. The purpose of the organization should be primarily religious.
2. The members must agree to adhere to, and in fact adhere to, a strict moral and spiritual regime of self-sacrifice and dedication to the goals of the organization to the detriment of their own material well being.
3. The commitment of the members should be full-time and of a long-term nature. In some cases it may be for life, but this is not essential. It is important that it not be short term, temporary or part-time.
4. The spiritual and moral discipline and regime under which the members live must be markedly stricter than that to which the lay church members are expected to adhere.
5. Admission to the order must be in accordance with strict standards of spiritual and personal suitability.
6. There should generally be a sense of communality.

The 1st Criterion - Purpose

The purpose of the organization should be primarily religious. It may have other objects within the overall context of that religious purpose such as education, the relief of poverty, or the alleviation of social ills and suffering. A religious order may have objects that go beyond preaching the gospel and prayer and meditation, and extend to works beneficial to humanity such as running hospitals or helping the poor and homeless.

Based on the incoming and the information on the webpage of the Entity, it is our understanding that the primary purpose of the Entity is to XXXXXXXXXXXX

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Based on the above description, in our view, the primary purpose of the Entity appears to be community services rather than

religion. The range of services provided by the Entity appears to be primarily geared towards the uplifting of the Jewish community and to help them in times of need. While the Entity may be offering many religious services to the community, in our view, religion is not the primary purpose of the organization.

In *Zylstra Estate v The Queen*, 94 DTC 6687, Mackay. J made the following comments when concluding why The Ontario Bible College and Ontario Theological Seminary ("OBC") and the Institute of Christian Studies ("ICS") were not considered a religious order for the purpose of claiming a clergy residence deduction pursuant to paragraph 8(1)(c) :

"There are two principal considerations which lead me to conclude that neither OBC nor ICS is a "religious order" within the intention of paragraph 8(1)(c). The first is that there is no expression of faith or of religious purpose of either institution apart from the educational purpose of each, that would mark the institution, and its members as distinct from the churches or denominations that each serves. That would appear to me, from dictionary definitions and from the testimony particularly of Professor Wiebe, to be a necessary quality of a "religious order". If it were otherwise the order would not be easily distinguishable from other institutions serving the general religious purposes of the churches concerned.

The second consideration is that both OBC and ICS have their primary purposes in education. That is offered with a particular religious emphasis and to serve the denominations which are supportive of them by education and training of persons from those denominations in spiritual and religious life, and for leadership through teaching and example. Those are noble and important purposes, but in my view they are oriented, quite properly for each institution, to education. They are not religious purposes in the sense pursued by a religious order, though some religious orders may also pursue educational purposes as subordinate to their primarily religious purpose of service to their God through worship, prayer and devotion. It was for generally similar reasons that Urie, J. determined a Hutterite community could not be considered a religious order (i.e. because its objects and purposes were not exclusively religious, but also included farming)...

I conclude that neither OBC nor ICS is a religious order within that term as it is used in paragraph 8(1)(c) of the Act..."

Similar sentiments were expressed by Bonner J. in *Osmond v The Queen*, 99 DTC 3487, when determining whether Kingsway College ("Kingsway"), a body corporate which operated a secondary school, was a religious order. Bonner J. made the following comments in this regard:

"I turn next to the question whether the Appellant was a member of a religious order. No authority was cited which supports the Appellant's argument that a denomination bound by a statement of faith and committed to a ministry such as operating a Christian college qualifies as a religious order for purposes of paragraph 8(1)(c)... The evidence does not suggest that any particular vow is unique to the Board of Kingsway or to the managers of the College or to the commissioned ministers employed by Kingsway. All such persons may be commissioned ministers but commissioned ministers are apparently not bound or committed by vow to do or be anything which sets them apart from other adherents of the Seventh-day Adventist religion. In *Oigny v. H.M.Q.*³ my colleague Dussault, J.T.C.C. thoroughly reviewed the relevant dictionary definitions and made the following observation at page 1752 with which I respectfully agree:

It appears clear from these definitions that, in order to form a religious order, persons must submit to particular rules uniting them, rules that are normally more compelling, usually vows, than those generally uniting the adherents to a religion or particular denomination.

The Appellant's submission is that persons who operate Kingsway College constitute a religious order. I should have thought that such persons are, quite simply, a group of officials or employees who operate a school. That occupational grouping does not, in my view, resemble or constitute a religious order. It follows that the Appellant was neither a member of nor engaged in full-time administrative service by appointment of a religious order."

In the given situation, in support of the religious background of the Entity, you state that:

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While it is true that the Entity provides a number of services to fulfil the needs of the Jewish community, in our view, religion is not the primary purpose of the Entity. In our view, the Entity is a faith based non-profit social service community which operates a variety of programs. We do not have any

information that indicates that the Entity is bound by a statement of faith or that any particular vow is unique to that organization which sets apart its members from the layman.

It is CRA's view that, to be a religious order for the purpose of paragraph 8(1)(c) of the Act, not most, but all the relevant criteria set out by the court should be met. Since the Entity has not met at least one condition, i.e., that the primary purpose of the organization must be religion, in our view, the Entity is not considered a religious order for the purpose of paragraph 8(1)(c) of the Act. (Further analysis of whether the Entity satisfies the remaining 5 criteria is, therefore, not necessary.) Consequentially, in our view, you are not considered to be exclusively in full-time administrative service by appointment of a religious order for the purpose of the 'function test'.

In your letter, you have indicated that you hold the position of a XXXXXXXXXXXX For the purpose of the 'function test', in our view, a Rabbi who XXXXXXXXXXXX would not be considered ministering to a congregation, nor would that individual appear to be engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination. We refer you to paragraphs 13, 14 and 15 of IT-141R for a description of "Ministering to a Congregation"; paragraph 18 for further comments on what is meant by "administrative service"; and paragraph 16 and 17 for comments on specialized ministries where persons who meet the status test and who perform specialized ministering may satisfy the function test depending on the significance of the ministry in the particular denomination.

As indicated earlier, in order to claim a clergy residence deduction pursuant to paragraph 8(1)(c) of the Act, it is necessary for an individual to satisfy both the status and function tests. As noted above, in our view, you do not satisfy the function test; therefore, you are not eligible to claim the clergy residence deduction provided for in paragraph 8(1)(c) of the Act.

We trust that our comments will be of assistance.

Yours truly,

R.A. Albert, CA
For Director
Financial Sector and Exempt Entities Division

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Income Tax Rulings Directorate