

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Ypsilanti Masonic Association,  
Petitioner,

v

MTT Docket No. 313921

Charter Township of Ypsilanti,  
Respondent.

Tribunal Judge Presiding  
Patricia L. Halm

ORDER DENYING PETITIONER’S MOTION TO TAKE JUDICIAL NOTICE

ORDER DENYING PETITIONER’S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY DISPOSITION

The issue in this case is whether real property, located at 5752 Whittaker Road in Ypsilanti Township and known as Parcel No. K-11-21-300-033 (the “subject property”), owned by the Ypsilanti Masonic Association (“Petitioner”) is exempt from property taxes under MCL 211.7o. Petitioner asserts that it is eligible for this exemption because it is a charitable institution. The Charter Township of Ypsilanti (“Respondent”) does not dispute that Petitioner is a nonprofit institution; however, Respondent denies that Petitioner is a charitable institution within the meaning of MCL 211.7o. Both parties filed motions for summary disposition under MCR 2.116(C)(10) and briefs in support thereof. For the reasons set forth herein, the Tribunal finds that Petitioner is not a charitable institution under MCL 211.7o and that its request for a property tax exemption for the 2005 and 2006 tax years must be denied.

**FINDINGS OF FACT**

The parties stipulated to the following facts:

1. Petitioner is a Michigan nonprofit corporation incorporated on November 24, 1934.
2. Petitioner received tax exempt status from the Internal Revenue Service on June 27, 1995.

3. Petitioner currently maintains IRA 501(c)(2) exempt status.
4. Petitioner owns the subject property, known as Parcel No. K-11-21-300-033. The property is located at 5752 Whittaker Road, Ypsilanti Township.
5. The subject property is classified as commercial property and contains a 9,480 square foot building.
6. Petitioner is a membership based organization.<sup>1</sup>
7. Petitioner's bylaws establish the qualifications for membership in its organization.
8. Petitioner's membership fees are established by a schedule.
9. According to Article I, Section 3, of Petitioner's Articles of Incorporation, Petitioner was incorporated for the following purpose: "[T]o provide, maintain, and administer a building or buildings to be used for Masonic purposes, to assess and collect rents and pay all approved bills."
10. Petitioner permits other organizations to use the subject property for meetings under the restriction that they will not use the building for any activities that may be objectionable to Masonic teachings.
11. Petitioner permits the subject property to be used for religious services.

### **EXHIBITS**

The parties stipulated to the following exhibits:

- A. A letter from the Internal Revenue Service confirming Petitioner's status as a 501(c)(2) organization.

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<sup>1</sup> According to Petitioner's By-Laws, dated February 18, 1993, its members include: Phoenix Lodge No. 13 F & AM, Excelsior Chapter 25, R.A.M., Union Council No. 11 R & SM, Ypsilanti Commandery No. 54, K.T.; and Chapter No. 20, Order of the Eastern Star are tenant-owners, and Assembly No. 20, Order of Rainbow for Girls and Huron Valley Chapter No. 23121, Order of DeMolay for Young Men are tenants only.

- B. A copy of a drawing depicting the size of the building located on the subject property.
- C. Petitioner's By-laws, dated February 18, 1993.
- D. Not provided. Petitioner indicated that its membership fees were to have been provided as Exhibit D.
- E. A Certificate of Amendment to Petitioner's Articles of Incorporation, filed May 11, 1994.
- F. Copies of ledger pages with redactions, and a list of donations with redactions.

### **PETITIONER'S MOTION FOR SUMMARY DISPOSITION**

According to Petitioner, "Masonic Associations are the nonprofit corporations authorized to be formed by Masonic member bodies for holding title to real property." (Petitioner's Brief, p9) (See MCL 457.221 *et seq.*) "Under Masonic and Michigan law this is the only way that the individual member bodies can hold title to property." (Petitioner's Brief, p10)

In its Motion for Summary Disposition, Petitioner asserts that the property it owns is entitled to an exemption from property taxes under Section 7o of the General Property Tax Act, being MCL 211.1 *et seq.* Petitioner contends that "[u]nder the facts as stipulated by the Petitioner and the Respondent, and pursuant to the holdings in other courts that Petitioner, a Masonic organization, is by nature a charitable organization, the Petitioner meets all of the requirements as set forth by the Court in its decision in *Wexford*." (Petitioner's Motion, p1)

In *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), the Michigan Supreme Court held that to be eligible for a property tax exemption under MCL 211.7o:

- (1) The real estate must be owned and occupied by the exemption claimant;
  - (2) The exemption claimant must be a nonprofit charitable institution; and
  - (3) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.
- Id.*, p203.

In determining whether a claimant is a “charitable institution” under MCL 211.7o, the *Wexford* Court set forth certain factors that should be considered.

Among them are the following:

- (1) A “charitable institution” must be a nonprofit institution.
- (2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.
- (3) A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
- (4) A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering or constraint; assists people to establish themselves for life; erects or maintains public buildings or works or otherwise lessens the burdens of government.
- (5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. (*Id.*, p215)

Petitioner asserts that the first factor is met because it is a Michigan nonprofit corporation. As for the second factor, Petitioner cites the *Wexford* Court’s decision wherein the Court stated:

It is improper to focus on one particular facet or activity. In that sense, the inquiry pertains more to whether an institution could be considered a ‘charitable’ one, rather than whether the institution offers charity or performs charitable work. So it is the overall nature of the institution, as opposed to its specific activities, that should be evaluated. (*Id.* pp212-213)

According to Petitioner, the issue of whether Masonic organizations are charitable for purposes of a property tax exemption has not been addressed by Michigan courts. However, various other states have held that Masonic organizations are charitable. In support of this statement, Petitioner provided citations to many cases from other states. Petitioner also argues that Masonic organizations are charitable because:

The very foundation of the Grand Lodge of the Free and Accepted Masons of the State of Michigan, to which every Masonic organization in this state is bound by law under MCL 457.231 *et seq*, has as its first declared principle “Freemasonry is a charitable, benevolent, educational and religious society, adhering to its own customs and landmarks. Its principles are proclaimed as widely as men will hear. Its only secrets are in its methods of recognition and of symbolic instruction. (Petitioner’s Brief, p7)

In addressing the third factor, whether Petitioner offers its charity on a nondiscriminatory basis, Petitioner states that “[t]he membership requirements to become a Mason require that the applicant be a male, over the age of eighteen years, with a belief in the Supreme Being.” (Petitioner’s Brief, p7) However, women may join an affiliate association, known as the “Order of the Eastern Star.” Petitioner’s membership organizations are not required to make donations only to other Masonic organizations, members or affiliates. Additionally, the subject property is “available to other charitable, religious or educational organizations, with the only restriction that they not use the facility for activities that may be objectionable to Masonic teachings.” (Petitioner’s Brief, p8)

Petitioner asserts that it meets the fourth factor by relieving people’s bodies from disease and suffering through the Shriner’s Hospitals, which are founded and funded by the Masons. Petitioner also lessens the burdens of government through “mandatory annual donations to the George Washington Masonic National Memorial Association.” (Petitioner’s Brief, p8)

The fifth factor is met because Petitioner does not charge its member organizations more to use its facility than is necessary for maintenance. If additional funds are collected, these funds are used to further Masonic purposes.

As to the sixth factor, Petitioner argues that:

. . . by its very nature as a Masonic organization [it is] a charitable institution. While it does make monetary contributions to various causes, as well as contributions by the members of services to charitable causes . . . and certain

portions of member fees are automatically collected and contributed to charitable organizations . . . contributions only demonstrate the actions of the charitable nature of the Petitioner. (Petitioner’s Brief, p9)

Finally, Petitioner states that in 2006, both houses of the Michigan legislature introduced bills to exempt property owned by Masonic Associations from real and personal property taxes.

According to Petitioner:

The supporters of this legislation recognize that these organizations and their members engage in numerous charitable activities within their respective communities. The obligation to pay property taxes impairs their ability to fund these activities as a significant financial strain on already limited resources. . . The proposed legislation recognizes the Petitioner’s arguments contained in this action as not only legitimate, but also that the Petitioner should not have to expend valuable resources to prove its right to an exemption that would be afforded it if the Masonic organizations as a whole were better understood by non-members. These organizations, while constrained by their own principles from advertising their good works, are as much a charitable organization as any publicly supported charitable institution. (Petitioner’s Brief, p10)

#### **RESPONDENT’S MOTION FOR SUMMARY DISPOSITION**

Respondent contends that “[t]he core issue in this case is whether the Ypsilanti Masonic Association falls within the meaning of a ‘nonprofit charitable institution’ as required by MCL 211.7o(1).” (Respondent’s Brief, p5) Like Petitioner, Respondent cites *Wexford* in support of its position. While Respondent does not dispute that Petitioner meets the first prong of the test set forth in *Wexford*, namely that it is a nonprofit institution, Respondent asserts that Petitioner does not meet the remaining parts of the test.

To that end, Respondent argues that the Tribunal may not infer that Masonic purposes are considered charitable; instead, Petitioner has the burden of proving that it is organized chiefly, if not solely, for charitable purposes. Respondent argues that Petitioner failed to meet this burden because:

According to the Ypsilanti Masonic Association Articles of Incorporation, the purpose of the Association is “to provide, maintain, and administer a building or buildings to be used for Masonic purposes.” . . . The term “Masonic purposes” is not defined as a charitable purpose. Absent proof that “Masonic purposes” are exclusively charitable purposes, the claim to a charitable exemption must fail. (Emphasis omitted.) (Respondent’s Brief, p8)

According to Respondent, Petitioner has not presented any evidence to support its assertion that Masonic purposes are charitable purposes. “The logical extension of Petitioner’s argument would entail that any club incorporated for ‘club purposes’ who claims to be a charitable institution would be granted a charitable exemption pursuant to MCL 211.7o.” (Respondent’s Brief, p12)

Petitioner fails the third prong of the *Wexford* test, according to Respondent, because Petitioner restricts its membership and use of its building to persons who will use the building for activities consistent with Masonic teachings. Respondent argues that “[t]he exclusion of persons who may engage in activities objectionable to Masonic teachings is contrary to the *Wexford* requirement #3 that a charitable institution serve ‘**any person who needs the particular type of charity being offered.**’” (Respondent’s Brief, p9) *Wexford* requires that “there can be no restrictions on those who are afforded the benefit of the institution’s charitable deeds.” *Id.*, p213. “Petitioner presents no evidence that its activities benefit ‘**the general public without restriction**’ or ‘**for the benefit of an indefinite number of persons.**’” (Respondent’s Brief, p9)

Finally, in response to Petitioner’s discussion of legislation to exempt Masonic Associations from property taxes, Respondent states that:

[it] would like to contend that this proposed Legislation demonstrates that Masonic organizations are currently not exempt under Michigan tax, it would not be proper to do so. . . [Legislation] may only be considered by the judiciary when [it] is adopted into law. (Respondent’s Brief, pp12-13)

### **PETITIONER’S REPLY BRIEF**

In response to Respondent’s Motion for Summary Disposition, Petitioner states that the “Declaration of Principles of the Grand Lodge of Free and Accepted Masons of the State of Michigan” prove that Masonic principles are charitable. Petitioner further states that if it is allowed to prove that these principles are its actual purpose, then it must be found to be charitable.

As for Respondent’s argument that Petitioner is not a charitable institution because it restricts the use of its building, Petitioner argues that Respondent has not considered the Court’s entire statement. Specifically, the Court held:

A second indispensable principle is that the organization must offer its charitable deeds to benefit people who need the type of charity being offered. In a general sense, there can be no restrictions on those who are afforded the benefit of the institution's charitable deeds. This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought. Rather, a charitable institution can exist to serve a particular group or type of person, but the charitable institution cannot discriminate within that group. The charitable institution's reach and preclusions must be gauged in terms of the type and scope of charity it offers. (*Id.*, p213)

Petitioner interprets this statement to mean that:

Petitioner only has to serve its members (a particular group) or those who do not go against its beliefs (a type of person). The Petitioner offers charity, education and religious support in a Masonic setting, if people are willing to accept that setting, the Petitioner welcomes any who ask. Is a charitable organization that serves the indigent and homeless a free meal or offers them temporary lodging when they are in distress ineligible for an exemption if they refuse to give the same free care to a wealthy man who would come into their shelter for the express purpose of berating the legitimate recipients of the charity for their lot in life? The charitable organization must be allowed to limit its charity within reason and practical scope. The human condition is too diverse for any one organization to be all things to all people. (Petitioner’s Reply Brief, p3)

In response to Respondent’s argument that Petitioner’s Articles of Incorporation and Bylaws do not contain the word “charitable,” Petitioner responds that *Wexford* does not contain

this requirement. If this were true, any organization could insert this word into these documents and demand a property tax exemption. Petitioner argues that “[w]ords are merely words, it is the actions and the practices that must be accounted for.” (Petitioner’s Brief, p4)

### **RESPONDENT’S REPLY BRIEF**

In response to Petitioner’s Motion for Summary Disposition, Respondent states that this case is similar to that of *Michigan United Conservation Clubs v Lansing Township*, 423 Mich 661; 378 NW2d 737 (1985). In that case, the Court denied the petitioner a property tax exemption under MCL 211.7o. The Court stated:

And while we agree that the petitioner did provide some services that could be deemed charitable gifts, we found on balance, the petitioner was organized to benefit its paying members rather than to benefit “the general public without restriction” or “for the benefit of an indefinite number of persons.” (*Id.*, p673)

Respondent acknowledges that Petitioner provides charitable gifts to other charitable organizations; however, “[t]he record here is devoid of any evidence that Petitioner offers charity without restrictions to the general public.” (Respondent’s Reply Brief, p3)

Respondent also points to the Bluebook of Masonic Law, which restricts membership to men and prohibits any contact with lodges that admit women or whose members are both men and women. The Masonic Bluebook of Laws specifically states: “That the membership of the Grand Lodge and Individual Lodges shall be composed exclusively of men; and that each Grand Lodge shall have no intercourse of any kind with mixed lodges or lodges which admit women to membership.” (Masonic Bluebook of Laws B-1) Additionally, members are restricted to those who believe in a “Supreme Being.” Respondent asserts that “[t]hese restrictions on membership are wholly inconsistent with the requirement that the association benefit the general public without restriction.” (Respondent’s Reply Brief, p4)

### **PETITIONER’S MOTION TO TAKE JUDICIAL NOTICE**

In its Motion to Take Judicial Notice, Petitioner argues that pursuant to the Michigan Rules of Evidence (“MRE”), Rule 201(e), “a court can take judicial notice of facts at any stage of the proceeding.” (Petitioner’s Motion, p1) Petitioner further argues that under MRE 201(b), a court may “take judicial notice of a fact that is not subject to reasonable dispute because it is ‘capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned’ . . . A court may take judicial notice if requested by a party and supplied with the necessary information. MRE 201(c).” (Petitioner’s Motion, pp1-2)

In this case, Petitioner requests that judicial notice be taken of:

- (1) Combination Raffle Licenses obtained from the State of Michigan Bureau of State Lottery Charitable Gaming Division . . . issued to the Free and Accepted Masons of the State of Michigan Phoenix Lodge No. 13, a member lodge of Petitioner . . . [and]
- (2) [A] copy of the Bureau of State Lottery Fraternal Organization Qualification Requirements. (Petitioner’s Motion, p2)

According to Petitioner, the State of Michigan issues the Raffle Licenses to “qualified organizations.” The licenses are issued under the Traxler-McCaully-Law-Bowman Bingo Act, being MCL 432.101 *et seq.*

Petitioner asserts that judicial notice should be given to these documents under MCR 201(b)(2) because they are “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” (Petitioner’s Motion, p2) Petitioner further asserts that these documents are essential to rebut Respondent’s position that “Masonic” purposes are not “charitable” purposes.

In its response to this Motion, Respondent objects to the documents because they are incomplete:

A party who presents documents to be admitted in evidence pursuant to MRE 201(c) is limited to facts that are (1) generally known within the territorial jurisdiction or (2) capable of accurate and ready determination. The documents proposed by Petitioner are neither. Judicial notice is reserved for facts which are generally known and quickly verifiable. Incomplete records are not admissible as judicially noticed evidence. (Respondent's Brief, p3)

In support of its position, Respondent cites *Winekoft v Pospisil*, 384 Mich 260 (1970), in which the Michigan Court of Appeals stated: "Judicial notice is based upon very obvious reasons of convenience and expediency; and the wisdom of dispensing with proof of matters within the common knowledge of everyone has never been questioned." (*Id.*, p268)

Respondent argues that while the documents are government records, they are incomplete and not authenticated. "Judicial notice does not extend to any and all purported government records. Judicial notice is reserved for matters of common knowledge known by everyone. The documents Petitioner offers in evidence fall short of this standard." (Respondent's Brief, p3)

Respondent also argues that the documents are not relevant to the issue of whether Petitioner is a charitable institution.

An organization that qualifies for a raffle license under the State Lottery Act MCL 432.1 et seq, does not automatically qualify for a property tax exemption under the charitable exemption of the GPTA. The GPTA exemption is much more restrictive in the requirements which must be met. Petitioner's attempt to use the raffle license issued under the State Lottery Act as evidence that Petitioner qualifies for a tax exemption under the GPTA misdirects the focus of this appeal. The focus must be on GPTA's requirements for a charitable institution exemption, not the State Lottery Act. (Respondent's Brief, p6)

Finally, Respondent objects to Petitioner's Motion because the parties stipulated to the facts to be considered and the documents Petitioner wishes to submit now were not included in the stipulation. Respondent argues that Petitioner should not be permitted to unilaterally enlarge the factual record.

## CONCLUSIONS OF LAW

Petitioner is organized under the Masonic Association Act, being MCL 457.221 *et seq.*

(Petitioner's Brief, pp9-10) Pursuant to that Act:

Any 10 or more residents of this state, who are members of any chartered body, or of different chartered bodies of the order of Free and Accepted Masons, may make and execute articles of association under their hands and seals, which said articles of association shall be acknowledged before some officer of this state having authority to take acknowledgment of deeds, and shall set forth . . .

The purpose of the association, which shall be to provide a building or buildings to be used for Masonic purposes, and the period for which such association is incorporated, not exceeding 30 years. (MCL 457.222)

Petitioner asserts that "Masonic Associations are the nonprofit corporations authorized to be formed by Masonic member bodies for holding title to real property . . . **Under Masonic and Michigan law this is the only way that the individual member bodies can hold title to property.**" (Emphasis added.) (Petitioner's Brief, pp9-10)

While Petitioner did not specify the statutes under which its members are organized, Petitioner discussed the principles of the Free and Accepted Masons, being MCL 457.231 *et seq.*, and argued that these principles demonstrate that it is a charitable organization. Pursuant to that Act:

Said corporation may acquire, hold, sell and convey any real or personal estate for its own use or for the use of any institution owned, established or maintained by it. It may own, establish and maintain a home or homes for members of the order of Free and Accepted Masons and their dependent relatives. It may take, hold and convey such other property, real or personal, as may be conveyed, devised or bequeathed to it in trust for any Masonic use, purpose, organization or institution. When authorized by the board of directors, all real and personal estate may be conveyed by deed or bill of sale in the name of the corporation, executed and acknowledged as the act and deed of the corporation by the grand master for the time being, or by such other person as the board of directors may appoint for that purpose, with the seal of the grand lodge attached, and such conveyance so executed shall be valid and binding for all intents and purposes whatsoever: Provided, however, That all property, real or personal, conveyed, devised or

bequeathed to said corporation in trust for any Masonic use, purpose, organization or institution shall be held by said corporation and used by it in accordance with the terms of the instrument by which the same is conveyed, devised or bequeathed. (MCL 457.234)

Additionally, the Masonic Lodge Act, being MCL 457.210 *et seq*, permits ownership of real property. See MCL 457.204. Given this, the Tribunal finds incorrect Petitioner's statement that Michigan law prohibits Masonic organizations from holding title to property unless it is organized as a Masonic Association.

In this case, both parties moved for summary disposition pursuant to MCR 2.116(C)(10), which provides the following ground upon which a summary disposition motion may be based: "Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." There is no specific tribunal rule governing motions for summary disposition. As such, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such a motion. TTR 111(4).

The Michigan Supreme Court, in *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996), provided the following explanation of MCR 2.116(C)(10).

MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.

First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR

2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, **the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.** (Emphasis added.) (Citations omitted.) (*Id.*, pp361-363)

In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

The general property tax act provides that “all property, real and personal, within the jurisdiction of this state, **not expressly exempted**, shall be subject to taxation.” (MCL 211.1) (Emphasis added.) Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 348; 330 NW2d 682 (1982). The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:

[I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and **an alleged grant of exemption will be strictly construed** and cannot be made out by inference or implication but **must be beyond reasonable doubt**. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and

unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. *Michigan Bell Telephone Company v Department of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, *Taxation* (4<sup>th</sup> ed.), §672, p. 1403.

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax. (*Id.*, p207)

It is also well settled that a petitioner seeking a tax exemption bears the burden of proving that it is entitled to the exemption. The Michigan Court of Appeals, in *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002), discussed Justice Cooley's treatise on taxation and held that:

...the **beyond a reasonable doubt** standard applies when the petitioner attempts to establish that an entire class of exemptions was intended by Legislature. However, the **preponderance of the evidence** standard applies when a petitioner attempts to establish membership in an already exempt class. (Emphasis added.) (*Id.* at 494, 495)

In the instant case, Petitioner asserts that the subject property is exempt from property taxes because Petitioner is a charitable institution (MCL 211.7o<sup>2</sup>). Charitable institutions have already been recognized as an exempt class. Because Petitioner is attempting to establish membership in that class, the preponderance of evidence standard applies.

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<sup>2</sup> While not specifically pled, in determining whether Petitioner's personal property was exempt pursuant to Petitioner's claim to be a charitable institution, the Tribunal also considered the exemption for personal property found in MCL 211.9a.

“In Michigan, exemptions from taxation are to be strictly construed in favor of the taxing unit.” *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980). Therefore, it is Petitioner’s burden of proof to establish facts and evidence to support its position that the requirements for an exemption have been met.

The exemption for real property owned and occupied by a nonprofit charitable institution is found in MCL 211.7o, which states in pertinent part: “Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.”

In *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), the Supreme Court restated the test for a charitable exemption previously affirmed in *Ladies Literary Club, supra*. The restated test provides that to qualify for an exemption under MCL 211.7o:

- (1) the real estate must be owned and occupied by the exemption claimant;
- (2) the exemption claimant must be a nonprofit charitable institution; and
- (3) the exemption exists only when the building and other property thereon are occupied by the claimant solely for the purpose for which it was incorporated.

There is no disagreement that Petitioner owns the subject property. However, given that Petitioner’s sole purpose is “[t]o provide, maintain, and administer a building or buildings to be used for Masonic purposes, to assess and collect rents and pay all approved bills,” it cannot be said that Petitioner actually occupies the building. (Petitioner’s Bylaws, Section 3) While it is true the Bylaws require Petitioner’s members to meet at the subject property once a month, there is no indication that Petitioner actually occupies the subject property. Instead, it rents the subject property to its members, churches and other organizations if they agree “that they will not use

the building for any activities that may be objectionable to Masonic teachings.” (Stipulated Fact #10)

The fact that Petitioner does not occupy the subject property is not determinative of whether it qualifies for an exemption under MCL 211.7o. Pursuant to Subsection 3 of that Act:

Real or personal property owned by a nonprofit charitable institution or charitable trust that is leased, loaned, or otherwise made available to another nonprofit charitable institution or charitable trust or to a nonprofit hospital or a nonprofit educational institution that is occupied by that nonprofit charitable institution, charitable trust, nonprofit hospital, or nonprofit educational institution solely for the purposes for which that nonprofit charitable institution, charitable trust, nonprofit hospital, or nonprofit educational institution was organized or established and that would be exempt from taxes collected under this act if the real or personal property were occupied by the lessor nonprofit charitable institution or charitable trust solely for the purposes for which the lessor charitable nonprofit institution was organized or the charitable trust was established is exempt from the collection of taxes under this act.

In other words, if it is determined that Petitioner is a nonprofit charitable institution or trust, it does not matter under MCL 211.7o whether Petitioner occupies the subject property if the property is leased, loaned or otherwise made available to another nonprofit charitable institution or trust that uses the property solely for the charitable purpose for which that nonprofit charitable institution or trust was organized. Therefore, because Petitioner does not occupy the subject property, it must first be determined whether Petitioner is a charitable organization. If it is, it must then be determined if the institutions to which Petitioner makes the subject property available for use are also charitable and, if so, if they use the property for their charitable purpose.

The stipulated facts show that Petitioner is a Michigan non-profit corporation that is exempt from Federal income tax under Section 501(c)(2)<sup>3</sup> of the Internal Revenue Code. However, an entity's status under the Internal Revenue Code does not, in and of itself, determine whether a claimant qualifies as a charitable institution under MCL 211.7o. In addressing this issue, the Michigan Court of Appeals held that:

The institute's income tax status does not affect or predetermine the taxable status of its property under the Michigan general property tax law, as it contends. The institute's exemption from Michigan ad valorem tax is not determinable by its qualifications as an organization exempt from income tax under section 501(c)(3) of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act, supra, sections 7 and 9. A reading of the language of these two provisions (Federal and State), clearly demonstrates the difference. The institute's services are principally for its members, which eventually will benefit the public, but are not the kind of services to the general public which are contemplated by the legislature enactment for tax exemption. (*American Concrete Institute v State Tax Commission*, 12 Mich App 595, 605-606; 163 NW2d 508 (1968))

In *Michigan Baptist Homes and Development Company v City of Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976), the Michigan Supreme Court stated that "exempt status requires more than a mere showing that services are provided by a nonprofit corporation." (*Id.*, p670) The Court also stated that to qualify for a charitable or benevolent exemption, the use of the property must "...benefit the general public without restriction." (*Id.*, p671)

The first step in determining whether an organization is charitable is to understand the definition of "charity." In *Retirement Homes v Sylvan Township*, 416 Mich 340; 330 NW2d 682 (1982), the Michigan Supreme Court established the following definition of "charity":

Charity is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the

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<sup>3</sup> §501(c)(3) of the Code provides, in pertinent part: "Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section."

influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. (*Id.*, p348)

In *Michigan United Conservation Clubs v Township of Lansing*, 423 Mich 661; 378 NW2d 737 (1985) (“*MUCC*”), the Court held that the proper focus is whether an organization’s “activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.” (*Id.*, p673) It is Petitioner’s responsibility to prove that its “**activities**, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.” (Emphasis added.) (*Id.*, p673)

In *Wexford Medical Group v Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), the Court held that this definition of charity:

...sufficiently encapsulates, without adding language to the statute, what a claimant must show to be granted a tax exemption as a charitable institution...In light of this definition, certain factors come into play when determining whether an institution is a “charitable institution” under MCL 211.7o and MCL 211.7n. Among them are the following:

1. A “charitable institution” must be a nonprofit institution.
2. A “charitable institution” is one that is organized chiefly, if not solely, for charity.
3. A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
4. A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering or constraint; assists people to establish themselves for life; erects or maintain public buildings or works or otherwise lessens the burdens of government.
5. A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
6. A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the

institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. (*Id.*, p215)

In this case, the parties have stipulated that Petitioner is a nonprofit corporation. The Tribunal concurs with this finding and finds that Petitioner meets the first factor.

Next, it must be determined whether Petitioner is organized chiefly, if not solely, for charity. In its Brief, Petitioner asserts that “the issue of whether or not Masonic organizations are charitable has not been addressed by the courts in Michigan . . . .” (Petitioner’s Brief, p6) This is not entirely true. In *Wexford*, a case cited by Petitioner, the Court discussed *Attorney General v Common Council of City of Detroit*, 113 Mich 388; 71 NW 632 (1897). Specifically, the Court stated that in *Common Council* it was:

. . . determined that real estate of the Masonic Temple Association, the Harmonie Society, and the Arbeiter Society were not exempt from taxation. Although this Court did not discuss the factual underpinnings of the decision, we did set forth this foundational principle: “It is not enough, in order to exempt such associations from taxation, that one of the direct or indirect purposes or results is benevolence, charity, education, or the promotion of science. They must be organized chiefly, if not solely, for one or more of these objects.” (Citations omitted.) (*Wexford*, p205)

Thus, while *Common Council* was decided a long time ago, the Michigan Supreme Court has determined that a Masonic Temple Association is not organized chiefly, if not solely, for charitable purposes and this decision has not been overturned.

Petitioner also states in its brief that the question of whether a Masonic Association is charitable “has been presented to, and determined by, many different courts, with the greater weight of authority sustaining the view that a Masonic organization is a charitable organization.” (Petitioner’s Brief, p6) In support of this position, Petitioner cited several cases in which Masonic organizations have been granted an exemption; Petitioner cited no cases to the contrary although they certainly exist.

Of the cases cited by Petitioner it appears that only one involves an Association similar to Petitioner; the remaining cases appear to involve organizations similar to Petitioner's members. In *City of Trenton v Trenton Masonic Temple Association*, 8 NJ Misc 778; 151 A 753 (1930), the petitioner was a nonprofit association organized for the purpose of holding title to a Masonic Temple. The petitioner requested a property tax exemption under NJSA 54:4-3.6, which provides an exemption for, *inter alia*:

. . . all buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of two or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children.

The court found that “[t]he temple in Trenton is used exclusively by a number of organizations falling within the statutory category” and granted the petitioner an exemption. (*Trenton Masonic Ass’n*, p781) This statute does not require the petitioner to be a charitable organization and, as such, provides no guidance in this matter.

In *Ithaca Masonic Temple Corporation v City of Ithaca*, 57 Misc 2d 72; 291 NYS2d 721 (1968), a case not cited by Petitioner, the New York court dealt with a request for a property tax exemption from a petitioner who was incorporated under the “Benevolent Orders Law<sup>4</sup>” and whose purpose was “[t]o build and maintain a building for its meetings and the meetings of the bodies comprising this corporation, or subordinate bodies of the Masonic Fraternity, and for the accommodation of other fraternal bodies or associations . . . .” (*Id.*, p73) The New York statute under which relief was requested, Section 428 of the New York Real Property Tax Law, provided that:

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<sup>4</sup> This statute specifies, *inter alia*, how a corporation organized under this statute must utilize its net income.

Real property owned by any fraternal corporation, association or body created to build and maintain a building or buildings for its meetings or meetings of the general assembly of its members or subordinate bodies thereof and for the accommodation of other fraternal corporations, associations or bodies, the entire net income of which real property is exclusively applied or to be used to build, furnish and maintain one or more asylums, homes or schools for the education or relief of its members or for the relief, support and care of the worthy and indigent members thereof, their wives, widows or orphans, shall be exempt from taxation and exempt from special ad valorem levies . . . (*Ithaca Masonic Temple*, p74)

In analyzing this statute, the court said that “[i]t was apparently the purpose of the legislature to make general the law exempting a body engaged in such charitable enterprise.” (*Id.*, p74)

After reviewing the petitioner’s exemption request, the court held:

No authority can be found in this state for the proposition asserted here that a group of fraternal organizations can form a corporation for the purpose of holding and maintaining lodge property and gain tax exemption therefor by providing in its certificate that any net income will be used for charitable purposes. Such organizations are not exclusively formed for charitable uses or purposes and any net income used for such purposes would constitute a negligible part of their revenue. (*Id.*, p75)

The court went on to state that “[t]he purpose of the Benevolent Orders Law was to create a convenient corporation to own and manage its property for the benefit of the various bodies which united to form it.” (*Id.*, p76) The court referred to this type of corporation as “a mere landlord corporation.” (*Id.*, p76)

The Tribunal finds that facts in *Ithaca Masonic Temple* are substantially similar to the facts in this case. Like Petitioner, the petitioner in *Ithaca Masonic Temple* is a membership organization. The parties have stipulated that, like the petitioner in *Ithaca Masonic Temple*, Petitioner’s purpose is “to provide, maintain, and administer a building or buildings to be used for Masonic purposes, to assess and collect rents and pay all approved bills.” (Stipulated Fact #9) Moreover, Petitioner states that “[a]dditional funds collected from or raised by the members are devoted to further Masonic purposes and distribution to serve charitable goals.” As in *Ithaca*

*Masonic Temple*, this claim does not elevate Petitioner to the status of an institution organized for a charitable purpose. Like the petitioner in *Ithaca Masonic Temple*, Petitioner's purpose is one similar to a landlord.

The Tribunal further finds that Section 428 of New York's property tax statute is similar to MCL 211.7o. Specifically, Subsection (7) provides:

A charitable home of a fraternal or secret society, or a nonprofit corporation whose stock is wholly owned by a religious or fraternal society that owns and operates facilities for the aged and chronically ill and in which the net income from the operation of the corporation does not inure to the benefit of any person other than the residents, is exempt from the collection of taxes under this act. (MCL 211.7o(7))

Additionally, MCL 211.9(1)(a) provides:

The personal property of charitable, educational, and scientific institutions incorporated under the laws of this state. This exemption does not apply to secret or fraternal societies, but the personal property of all charitable homes of secret or fraternal societies and nonprofit corporations that own and operate facilities for the aged and chronically ill in which the net income from the operation of the nonprofit corporations or secret or fraternal societies does not inure to the benefit of a person other than the residents is exempt.

Clearly, Petitioner would qualify for an exemption as a charitable institution if the property in question was a charitable home for the aged and chronically ill. Because the subject property is not a charitable home, as in *Ithaca Masonic Temple*, the Tribunal can find no authority "for the proposition asserted here that a group of fraternal organizations can form a corporation for the purpose of holding and maintaining lodge property and gain tax exemption" by claiming that any net income will be used for charitable purposes.

Petitioner argues that *Wexford* does not require that the word "charitable" be included in its Articles of Incorporation. The Tribunal agrees; however, an organization must state its purpose in its Articles of Incorporation. Articles that do not include a statement that the

organization has a charitable purpose, as in 501(c)(3) organizations, are suspect. The Tribunal finds that an organization's Articles of Incorporation are an important tool in determining whether an organization is charitable. In this case, Petitioner's Articles of Incorporation state that the purpose of the corporation is:

To provide a building or buildings to be used for MASONIC purposes and in general to carry on any business in connection therewith and incident thereto not forbidden by the laws of the State of Michigan, and with all powers conferred upon corporations by the Laws of the State of Michigan.

Clearly, Petitioner's stated purpose does not contain the word "charitable" or even hint at a charitable purpose. Instead, its sole purpose is to provide a building for use by the Masons. This purpose is not necessarily unique to nonprofit corporations.

Another telling document is a corporation's Bylaws. Similar to the Articles of Incorporation, Petitioner's Bylaws state that:

The purpose of this Association shall be to provide, maintain, and administer a building or buildings to be used for Masonic purposes, to assess and collect rents and pay all approved bills.

As previously discussed, this language is also contained in Petitioner's authorizing statute which states, in pertinent part: "The purpose of the association, which shall be to provide a building or buildings to be used for Masonic purposes, and the period for which such association is incorporated, not exceeding 30 years." (MCL 475.222) Again, there is no mention of a charitable purpose.

Petitioner argues that "[w]ords are merely words, it is the actions and practices that must be accounted for." (Petitioner's Reply Brief, p4) However, Petitioner provided no documentary evidence that its actions and practices are charitable. Petitioner points to the Blue Book of Michigan Masonic Law. However, these are merely words. The parties stipulated to Petitioner's

financial records for 2004-2005. These documents reveal little, if anything. It does not appear that Petitioner's name is even located on these documents, most of which are redacted hand-written ledgers. Thus, it is unclear which of these documents, if any, are actually Petitioner's and not a member's organization document. The only document that provides any indication of charity is a "donation list" for the Ypsilanti Chapter No. 119 of the Eastern Star, one of Petitioner's members.

Even if the Tribunal were to consider the documents Petitioner submitted with its Motion for Judicial Notice, the Tribunal finds these documents provide no evidence of Petitioner's charity. These documents consist of copies of Combination Raffle Licenses issued by the State of Michigan, Bureau of State Lottery, Charitable Gaming Division, to F & AM ("Free and Accepted Mason") 13 Phoenix Lodge for raffles to be conducted at the subject property, Raffle License Applications submitted by the F & AM, Raffle Financial Statements and the Fraternal Organization Qualification Requirements issued by the Bureau of State Lottery. While the licenses were for raffles to be held at the subject property, the licenses were not issued to Petitioner. As for the Fraternal Organization Qualification Requirements, the only relevant information that this document adds is that to obtain a license the applicant must be a 501(c) organization. These licenses were not issued to Petitioner.

Petitioner's Reply Brief contains the following statements: "if the Petitioner is allowed to prove that the Declaration of Principles of the Grand Lodge of Free and Accepted Masons is indeed its actual purpose, then Petitioner must be found to be charitable in the accepted and broad sense of the word," and "[i]f the Petitioner is allowed to present evidence supporting [its position that it is charitable], it is the job of the Tribunal to make this determination, not the Respondent." (Petitioner's Reply Brief, p2 and pp4-5) The Tribunal does not understand these

statements; Petitioner was not restricted as to what evidence it was allowed to present. In fact, Petitioner was required, in response to Respondent's Motion for Summary Disposition under MCR 2.116(C)(10), to set forth facts showing that there was still a genuine issue of fact.

Petitioner failed to do so.

MCR 2.116(G)(4) provides that once a (C)(10) motion has been made and supported,

an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.

Petitioner's response to Respondent's Motion contained no additional documentary evidence or affidavits. Instead, the response contained conclusory statements such as "Petitioner offers charity, education and religious support in a Masonic setting . . . ." (Petitioner's Reply Brief, p3) Furthermore, Petitioner filed its own (C)(10) motion, meaning that Petitioner believed there were no genuine issues of material fact. In addition, Petitioner agreed to stipulated facts and exhibits and provided further exhibits with its Brief. Petitioner has had both its opportunity to make its case in support of its (C)(10) motion and, in the alternative, to submit documentary evidence to prove that there remains a genuine issue as to a material fact. Petitioner failed in both regards.

When all of Petitioner's activities are taken as a whole, the Tribunal cannot help but find that Petitioner did not prove by a preponderance of the evidence that its activities constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons. Because the Tribunal finds that Petitioner is not a charitable organization, there is no need to determine whether Petitioner meets the remaining *Wexford*

factors. Further, because Petitioner is not a charitable organization, there is no need to determine whether Petitioner's members are charitable under MCL 211.7o(3).

As for Petitioner's discussion of legislation introduced to grant Masonic Associations a property tax exemption, the Tribunal agrees with Respondent in that only bills that have been signed into law may be considered. However, a review of HB 5761 of 2006 reveals that this legislation was adopted by the legislature and subsequently vetoed by the Governor for budgetary reasons. Because the Legislature is deemed to be aware of existing law, it is reasonable to assume that the Legislature believed that Masonic Associations are not charitable organizations. If they believed otherwise, the legislation would not have been necessary.

The remaining issue is that of Petitioner's Motion to Take Judicial Notice. In *Freed v Salas*, 286 Mich App 300; \_\_\_ NW2d \_\_\_ (2009), the Court of Appeals held that:

Pursuant to MRE 201(b), for a trial court to take judicial notice of a fact, it "must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Taking judicial notice is discretionary. MRE 201(c). (*Id.*, p \_\_\_)

In this case, Petitioner submitted copies of Combination Raffle Licenses issued by the State of Michigan, Bureau of State Lottery, Charitable Gaming Division, to F & AM ("Free and Accepted Mason") 13 Phoenix Lodge for raffles to be conducted at the subject property, Raffle License Applications submitted by the F & AM, Raffle Financial Statements and the Fraternal Organization Qualification Requirements issued by the Bureau of State Lottery. However, Petitioner's Motion is not clear as to exactly what it is that Petitioner would like the Tribunal to take judicial notice of. If Petitioner's request is to take judicial notice of these documents, there are several reasons why this cannot be done. For example, many of the licenses are not dated, there are clearly pages missing and the documents were not authenticated.

Moreover, MRE 201 applies to facts, not documents. If Petitioner's request is to take judicial notice of the fact that the licenses were issued, the Tribunal could do so. However, because these documents do not contain dates, it is impossible to determine if they are applicable to the tax years at issue. Therefore, they are of little evidentiary value. For these reasons, Petitioner's Motion to Take Judicial Notice must be denied.

The Tribunal finds that Petitioner does not qualify for a property tax exemption under MCL 211.7o or MCL 211.9(a). The Tribunal further finds that there are no genuine issues of material facts remaining and that summary disposition must be granted in favor of Respondent pursuant to MCR 2.116(C)(10).

#### **JUDGMENT**

IT IS ORDERED that Petitioner's Motion to Take Judicial Notice is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: May 5, 2010

By: Patricia L. Halm