STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Calvin Theological Seminary,
Petitioner,

v

MTT Docket Nos. 17-001262 and 17-001267

City of Grand Rapids,
Respondent.

Tribunal Judge Presiding
Preeti P. Gadola

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On December 1, 2017, Petitioner filed a motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case pursuant to MCR 2.116(C)(10). More specifically, Petitioner contends its property is exempt from ad valorem property taxation pursuant to MCL 211.7o as the property of a charitable institution, MCL 211.7n as the property of an educational institution, and/or MCL 211.7s as the property of a religious society.

On December 21, 2017, Respondent filed a response to Petitioner's Motion and a cross Motion for Summary Disposition also pursuant to MCR 2.116(C)(10), contending the subject property is not exempt from taxation.

On January 11, 2018, Petitioner filed a response to Respondent's Cross Motion for Summary Disposition.

The Tribunal has reviewed the Motions, responses and the evidence submitted and finds that granting Petitioner's Motion for Summary Disposition is warranted at this time. The Tribunal also finds that denying Respondent's Motion for Summary Disposition is warranted at this time.

Petitioner in this matter is a not-for-profit, 501(c)(3) educational institution that operates a seminary affiliated with the Christian Reformed Church of North America. Petitioner provides

off-campus housing for many of its graduate students, particularly married and international students, and occasionally visiting faculty, including sixty-two units located off campus, which are the subject of this appeal. The off-campus housing consists of six apartment buildings on Batchawana Street, S.E. and five apartment buildings on Englewood Ave., S.E. in the City of Grand Rapids. The properties are not contiguous, and as such the appeals were consolidated.

PETITIONER'S CONTENTIONS

In support of its Motion, Petitioner contends that it rents its housing units to seminary students at a significantly below-market rate, the property had been granted tax exempt status for twenty-years prior to being added to the tax roll in 2017, and Petitioner has not changed its purpose or the operations at the subject properties. Petitioner further contends that in 2016, the seminary operated at a loss and only 16.62% of its annual revenues were attributed to tuition and housing fees. The additional revenue came from private gifts and grants, investment income from the seminary's endowment and funding from the Christian Reform Church of North America. In 2016, the seminary also provided grants to 280 students. Petitioner contends the subject properties are exempt from taxation pursuant to MCL 211.7o, MCL 211.7n and/or MCL 211.7s.

In Response to Respondent's arguments, Petitioner contends that it occupies the subject properties as required by MCL 211.7o as its students and faculty, student-employees and employees have a regular physical presence on the properties and "its student housing is incidental to the operation of the seminary and directly serves the primary purpose for which the seminary was organized."[1] As such, the properties are occupied solely for the purposes for which the seminary was incorporated. Petitioner also contends it is a state accredited educational institution and relieves the burden on comparable state programs that offer the courses and fields of study also offered by Petitioner. Petitioner finally contends the properties are owned by a religious society and used predominantly for the teaching of religious truths and beliefs of the society.

[1] Petitioner's Response at 1.

RESPONDENT'S CONTENTIONS

In support of its response, Respondent contends that Petitioner does not occupy the subject properties pursuant to MCL 211.7o(1). Respondent contends Petitioner does not have a regular physical presence on the properties and that Petitioner does not occupy the properties solely for the purposes for which it was incorporated, but for residential purposes. Respondent also contends the subject properties are not exempt as the properties of a non-profit educational institution pursuant to MCL 211.7n as Petitioner is a specialized school whose primary purpose is to prepare students for ordination and as such, it does not relieve a governmental burden. Respondent also argues, pursuant to MCL 211.7n, that Petitioner does not occupy the properties.

Respondent argues that the subject properties are not exempt from taxation pursuant to MCL 211.7s as its off-campus housing is not a parsonage or house of public worship. The off-campus housing is utilized by students studying to become ordained teaching ministers, but the students are not presently pastors. Respondent further contends that the subject properties are not utilized predominantly for religious services, or for the teaching religious truths and beliefs of a religious society, and as such, they do not fit into the exemption under section 7s, as they are used predominantly for residential purposes.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[2] In this case, both parties move for summary disposition under MCR 2.116(C)(10).

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.[3]

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light

[2] See TTR 215.
[3] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

most favorable to the non-moving party.[4] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[5] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[6] Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.[7] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[8]

Respondent contends in its Motion, "[t]he Seminary has set forth a concise and accurate statement of facts in its brief in support of its own motion for summary disposition. (Pet'r Br at 1-5). There is no dispute about the material facts of this case, and the City therefore adopts the Seminary's statement of facts by reference."[9]

CONCLUSIONS OF LAW

As noted above, Petitioner contends that the subject properties are exempt from ad valorem property taxation pursuant to MCL 211.7o, MCL 211.7n and MCL 211.7s. As such, the Tribunal will explore the properties' entitlement to exemption under each section.

Charitable Exemption Pursuant to MCL 211.7o(1)

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."[10] "Exemption statutes are subject to a rule of strict construction in favor of the taxing authority."[11] It is also well-settled that a petitioner seeking a tax exemption bears the burden of proving, by a preponderance of the evidence, that it is entitled to the exemption.[12]

MCL 211.7o(1) provides:

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[4] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[5] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[6] *Id.*
[7] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[8] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).
[9] Respondent's Brief at 1.
[10] MCL 211.1 (Emphasis added).
[11] *Huron Residential Services for Youth, Inc v Pittsfield Charter Twp*, 152 Mich App 54,58; 393 NW2d 568 (1986).
[12] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 492; 644 NW2d 47 (2002).

> 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 that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

The Michigan standard for a charitable exemption is more rigorous than the federal standard. The fact that a petitioner may qualify for tax exempt status under federal law (i.e., Section 501(c)(3) of the Internal Revenue Code) creates no presumption in favor of an exemption from property taxes.[13] In *Wexford Medical Group v Cadillac*,[14] the Supreme Court presented the test for determining if an organization is a charitable one under MCL 211.7o and stated:

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.

In order to determine if it is entitled to a property tax exemption under MCL 211.7o, Petitioner must prove by a preponderance of the evidence that it is a "charitable institution."

The real estate must be owned and occupied by the exemption claimant

The exemption exists only when the building and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated

At issue in the cross motions for summary disposition is whether the subject properties are occupied by Petitioner and whether they are occupied solely for the purposes for which Petitioner was incorporated. There is no allegation that Petitioner did not own the subject properties on December 31, 2016, however, were the properties occupied by Petitioner? The parties disagree over whether Petitioner meets the two occupancy requirements, above. The

[13] See *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753 n 1; 298 NW2d 422 (1980); see also *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968), which states, "The Institute's exemption from Michigan ad valorem tax is not determinable by its qualification 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 . . . ."
[14] *Wexford Medical Group v Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006).

Tribunal finds "owned and occupied" to be a separate requirement under part one from its later occurrence, set forth in part three of the test, "occupied . . . solely for the purposes for which that . . . institution was incorporated." Should Petitioner fail to meet either occupancy test, its properties cannot qualify for an exemption under MCL 211.7o(1).

The Supreme Court in *Liberty Hill Housing Corporation v City of Livonia*,[15] sets forth its holding regarding the first occupancy requirement under Section 7o(1):

> The dissent would hold that a charitable institution may occupy property by using it without maintaining a physical presence there. Such an interpretation leads to one of the following two unsatisfactory conclusions: (1) a charitable institution can occupy property without actually being physically present or (2) a charitable institution need only use the property sporadically or perhaps even once to occupy it. Neither of these conclusions is consistent with proper meaning of the term "occupy." Rather, a charitable institution must maintain *a regular physical presence* on the property to occupy the property under MCL 211.7o.[16]

In *Liberty Hill*, Petitioner was a non-profit organization that's purpose was to provide housing to disabled and low-income individuals, referred to it by its parent organization, Community Living Services. The Court found once a property was leased, Petitioner did not maintain a regular physical presence thereupon, because the fifty-one houses were leased for the tenants' own personal purposes and Petitioner had no ongoing day-to-day presence in the homes. The Court also considered the dictionary definition[17] of occupy, and found the second meaning, to "reside in or on" or "to be a resident or tenant or dwell in," to also include the meaning, "to be present habitually, be inherent," which puts forth the requirement of a regular physical presence.[18] The Court also found, "[a] charitable institution's *members, employees or volunteers* may dwell on the property or at least be habitually present on the property, which is consistent with the meaning of 'reside.'"[19]

With regard to the first occupancy requirement pursuant to MCL 211.7o(1), Petitioner claims the subject properties, unlike the properties in *Liberty Hill*, were not rented under traditional leases to the general public or to people over whom petitioner exerts no control.

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[15] *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 746 NW2d 282 (2008).
[16] *Id*. at 61-62 (Emphasis added).
[17] *Webster's Universal College Dictionary* (1997)
[18] *Liberty Hill*, 480 Mich at 58.
[19] *Id*. at 60 (Emphasis added).

Petitioner leases the properties to its own students, many of whom are employees,[20] and at times to visiting faculty, under "its unique student housing contracts and subject to the seminary rules of conduct."[21] Further, the "students' physical residence in the student housing is integrally linked with the students' tenure at the seminary: if a student leaves the seminary, then the student must leave its student housing."[22]

Petitioner contends that without low-cost student housing, many of its low-income students and international students, who comprise 38% of the student population, could not attend the seminary. Petitioner also contends it maintains a regular physical presence on the properties because its housing director has keys to each and every apartment, maintenance staff has access to the subject properties, and Petitioner has a coordinated group of resident, block captains to monitor the security of the properties.[23] Petitioner claims its maintenance staff is physically present at the subject properties virtually every day, accessing storage sheds, providing ground maintenance, cleaning hallways and common areas, and responding to calls from student residents. Petitioner also maintains a large storage shed, on the properties, that contains extra furniture for visiting scholars. Petitioner further maintains a supply room/laundry room, formerly an apartment, on the properties which houses maintenance supplies, but also includes a desk and computer, belonging to Petitioner and used by employees with some regularity.[24]

Respondent contends the seminary, itself, acknowledges that the subject properties are rented exclusively to seminary students, and the occasional visiting faculty, through a landlord-tenant relationship, as was the case in *Liberty Hill.* Respondent contends that Petitioner admits through its Controller, Mr. Bardolph, that it does not occupy the property, its student-tenants do. Mr. Bardolph states in his affidavit, "[t]he Subject Properties are *used exclusively for housing students,* as well as – occasionally – for housing visiting faculty."[25]

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[20] "Currently approximately 29 of the 70 students who live in the Subject Properties are employed in some capacity by Calvin Seminary. Some of these student employees who are housed at the subject properties work on maintenance, especially over the summer, while others work in academic positions, as teachers' assistants or providing clerical help." Petitioner's Response, Exhibit 38, Supplemental Affidavit of David J. Bardolph, Controller, Calvin Seminary ("Supp Bardolph Affi"), at paragraph (¶) 11.
[21] Petitioner's Response at 4. Examples of rules of conduct include prohibitions on the use of alcohol in common areas and on unrelated opposite-sex visitors. See Exhibit 10.
[22] Petitioner's Response at 4, Exhibit 8, Exhibit 38, Supp Bardolph Affi at ¶ 12.
[23] Petitioner's Response at 7, Exhibit 38 Supp Bardolph Affi at ¶¶ 11-15.
[24] *Id.* at ¶¶ 7-9.
[25] Respondent's Response at 11-12, quoting Petitioner's Brief, Exhibit 1, Affidavit of David J. Bardolph at ¶ 20.

Respondent contends that pursuant to Petitioner's lease contract, "the seminary has limited right of entry to perform inspections, with notice and with-out notice in limited situations."[26] Respondent alleges the seminary staff's occasional maintenance does not confirm that the properties are occupied by other than the student-tenants or that their presence was regular.

Respondent claims that the Court of Appeals in *Chelsea Health and Wellness Foundation v Twp of Scio,*[27] found that a management company of the charitable institution was not its occupant, because it did not have a regular physical presence at the property. An employee of the management company worked there twelve hours per week, the CEO visited approximately two times per week, for varying lengths of time, both had keys to the property and shared a cubical, but the company's presence, "was by no means constant, the occupancy component . . .*requires* a regular physical presence."[28] [Emphasis in the original]. Respondent contends, as in *Chelsea,* Petitioner's presence on the properties is not constant.

The Tribunal finds Petitioner does have a regular physical presence on the subject properties, therefore, it does occupy the properties pursuant to MCL 211.7(o)(1), test one. Pursuant to Petitioner, not only are approximately 29/70 students who reside in the off-campus apartments Petitioner's employees, but its maintenance staff, unlike the staff in *Chelsea*, is present on the properties virtually every day. Further, Petitioner's Controller has keys to all the apartments and pursuant to the lease, "routine inspections" are subject to proper notification, not everyday maintenance. The subject properties do not resemble the housing in *Liberty Hill,* as Petitioner does not rent the student housing and then leave its students to their own devices. The students have to abide by seminary policy regarding alcohol use and opposite-sex visitors, and Petitioner maintains a day-to-day presence, even retaining right to access "without prior notification and/or permission when there is sufficient reason to believe there is a violation of seminary or state regulations, for maintenance purposes, and in emergency situations."[29] Petitioner additionally provides a desk and computer for its maintenance employees situated on the subject properties, further establishing its employees' regular physical presence. The

[26] Respondent's Motion at 4, Exhibit B (Lease) at 1.
[27] *Chelsea Health and Wellness Foundation v Twp of Scio*, unpublished per curiam opinion of the Court of Appeals, issued October 12, 2017 (Docket No. 332483).
[28] Respondent's Brief at 5.
[29] Respondent's Brief, Exhibit B.

Tribunal finds Petitioner has proven by a preponderance of the evidence that is has a regular physical presence on the properties

With regard to the second requirement under *Wexford*, that the properties are "occupied . . . solely for the purposes for which that . . . institution was incorporated," Petitioner contends one of the seminary's purposes, per its Articles of Incorporation, is "[t]o do all things necessary or incidental to or usually done by similar types of institutions."[30] Petitioner claims educational institutions routinely provide housing for their students, and as such, the use of the properties is to provide a service that is necessary or incidental to its educational purpose and is usually done by similar institutions.

Petitioner contends the properties are used solely to foster its educational goals by allowing students and visiting faculty, housing so that they can attend or teach at the seminary. Petitioner claims it is not conducting a side business in renting apartments to the general public, rather the seminary is providing below market housing to its own students, exactly as universities have done "for at least 800 years."[31]

Petitioner contends that it occupies the subject properties solely for the purposes for which it was incorporated, pursuant to the Supreme Court decision in *Oakwood Hospital Corporation v State Tax Commission*[32] in which Oakwood's doctors and interns resided in physicians' housing near the hospital because "housing the doctors and interns near the hospital was necessary to the proper functioning of the hospital and that the trainees were 'unwilling to come [to be trained at the hospital] unless furnished housing by the hospital.'"[33] Petitioner's trainee housing received an exemption from the payment of property tax because the Court found the rental housing was "occupied in furtherance of and for the purposes for which plaintiff was incorporated[34] and for hospital and public health purposes."[35] Petitioner contends here, the

[30] Petitioner's Response at 7, quoting Exhibit 2 Articles, at 1.
[31] Petitioner's Response at 10, quoting *Yale University v New Haven*, 71 Conn 316; 42 A 87, 89. 93 (1899).
[32] *Oakwood Hospital Corp v State Tax Comm*, 374 Mich 524, 526, 132 NW2d 634 (1965).
[33] Petitioner's Response at 3, *Oakwood Hospital*, 374 Mich at 530.
[34] Oakwood Hospital's Articles state its purpose to be, "'[t]o establish, build, own, lease or otherwise acquire, maintain, equip, and operate a general hospital or hospitals in the State of Michigan; to furnish or make available therein such professional and other services as are necessary or desirable for the care of sick, afflicted, infirm or injured persons; and, incidental to the foregoing and in connection therewith, to engage in scientific research and educational or other activities which are related to and are designed to promote and improve the general health and welfare.'" *Oakwood Hospital*, 374 Mich at 527.
[35]Petitioner's Response at 3, *Oakwood Hospital* 374 Mich at 530.

subject properties are occupied by its own seminary students, "in order to facilitate its organizational goals."[36]

Respondent contends that Petitioner does not "occupy" the properties solely for the purposes for which it was incorporated. Respondent contends the seminary's statement of purpose is included Article II of its Articles of Incorporation which state its purposes as:

1. To furnish future ministers graduate academic and theological training entirely in accord with the doctrinal standards of the Christian Reformed Church in North America;
2. To grant students Master of Divinity, Master of Arts in Educational Ministry, Master of Arts in Missions and Church Growth, Master of Theology, Master of Ministry, Master of Theological Studies, Doctor of Philosophy degrees and other graduate degrees based on completion of such requirements as shall be determined by the Board of Trustees;
3. To grant such other certificates or diplomas for less than four years training . . .
4. To do all things necessary or incidental to or usually done by similar types of institutions.[37]

Respondent contends that Petitioner argues the housing "is critical to its educational mission" and "an important part of the seminary's appeal to students." However, Respondent contends "it would be a stretch to conclude that housing students is one of the purposes for which the seminary was incorporated."[38]

Respondent claims, in *American Legion Memorial Home Association of Grand Rapids v City of Grand Rapids,*[39] the Court found occasional or incidental use, by various civic organizations, of the charitable institution property for other purposes does not defeat the exemption requirement of use solely for the purposes of which it was incorporated. Respondent further contends, however, that it cannot be said that the residential use here is an incidental use of the charitable institution's property. The subject properties' primary use is for residential purposes.[40]

The Tribunal finds Petitioner does occupy the properties solely for the purposes for which it was incorporated. Petitioner was incorporated to educate future ministers, grant graduate degrees in divinity, theology, missions and church growth, among others, and "to do all things

[36] Petitioner's Response at 3.
[37] Respondent's Brief at 6, Exhibit C at 1.
[38] Respondent's Brief at 7.
[39] *American Legion Memorial Home Association of Grand Rapids v City of Grand Rapids,* 118 Mich App 700; 325 NW2d 543 (1982).
[40] Respondent's Brief at 7.

necessary or incidental to or usually done by similar types of institutions." The Tribunal finds the provision of housing is necessary, incidental and usually done by educational institutions.

Petitioner likens its off-campus housing to the exempt hospital housing in *Oakwood Hospital*, a case discussed in *Liberty Hill* regarding occupancy test two, where the hospital provided nearby housing for its resident physicians and interns "whose services and availability to the hospital at all times and on short notice are essential to the operation of the hospital . . . ."[41] Here, seminary students and faculty are essential to the operation of the seminary, as it would not exist, or fulfill its purposes, without student/employees, and faculty, just as a hospital would not exist, or fulfill its purposes, without physician and intern trainees. Further, related to the trainees who would not train without nearby housing in *Oakwood Hospital*, Petitioner contends low-income and international students may not attend the seminary without inexpensive and nearby housing.[42] The hospital charged its trainees $100 per month in rent, simply defraying expenses, as the operation of the houses cost it $150 per month. Comparably, the housing fees the seminary charges do not provide it with a profit.[43] The Court in *Oakwood Hospital* found the "houses were built as necessary accessories to the hospital," [44] just as the seminary student housing is a necessary accessory to the seminary. The Court found the "occupancy by the doctors and interns is incidental to the use of the entire property for hospital purposes and the operation of the thereof as such."[45]

The Court in *Liberty Hill* also discussed *Gull Lake Bible Conference Association v Ross Township*,[46] pursuant to occupancy test two:

> Plaintiff's stated purpose was "[t]o promote and conduct gatherings at all seasons of the year for the study of the Bible and for inspirational and evangelistic addresses." The plaintiff sought a charitable exemption from property tax for its property. Besides a tabernacle and youth chapel (for which the tax-exempt status was not contested), the property included an old hotel building used to house employees, a fellowship center building, a trailer campsite for persons attending the conference and living in trailers, cottages that were rented to persons attending the conference, a gravel pit, a picnic area, boat docks, a bathhouse, a beach, a playground, horseshoe and badminton courts, and parking areas. The Court determined that the housing and recreational facilities on the property were

[41] *Oakwood Hospital* 374 Mich at 527.
[42] Petitioner's Brief, Ex. 1, Bardolph Affi at ¶¶ 11-14.
[43] *Oakwood Hospital,* 374 Mich at 527.
[44] *Id.*
[45] *Id*. 530.
[46] *Gull Lake Bible Conference Ass'n v Ross Twp,* 351 Mich App 269; 88 NW2d 264 (1958).

> necessary to fulfill the plaintiff's purpose. And it was occupied by the plaintiff solely for the purpose for which it was incorporated.[47]

Similarly, in this matter, the Tribunal finds the seminary's off-campus housing is necessary to fulfill Petitioner's purposes. Petitioner claims the only reason the seminary "owns the Subject Properties is to host students and/or visiting faculty so that they can attend, or teach at, the seminary." Additionally, as noted above, if a student leaves the seminary, it must leave the housing.[48]

The Court in *Liberty Hill* also discussed *Webb Academy v Grand Rapids*,[49] wherein the plaintiff, an educational institution, sought a property-tax exemption. Webb Academy conducted school business on the property, however in addition, the founder of the school and his wife, a teacher at the school, lived on the property, along with a student who helped with upkeep in exchange for room and board. The Court found that the property was occupied by the educational institution solely for the purposes for which it was incorporated and that the other minor uses, such as housing incidental to the school uses, did not defeat that conclusion, just as the use of seminary properties for housing does not defeat its school uses. Overall, the Tribunal finds Petitioner has proven by a preponderance of the evidence, that it occupies the subject properties, by having a regular physical presence, and also occupies them solely for the purposes for which it was incorporated.

The exemption claimant must be a non-profit charitable institution

Pursuant to the second requirement under MCL 211.7o(1), the claimant must be a non-profit charitable institution. The first step in determining whether an organization is charitable is to understand the definition of "charity." The Michigan Supreme Court established the following definition of "charity":

> '[C]harity . . . 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 influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life,

[47] *Liberty Hill,* 480 Mich at 53. (Internal citations omitted).
[48] Petitioner's Response Brief at 4, Ex 38, Supp Bardolf Affi at ¶12, Ex 8, Housing Contract at 6.
[49] *Webb Academy v Grand Rapids,* 209 Mich 523, 525, 177 NW 290 (1920).

> or by erecting or maintaining public buildings or works *or otherwise lessening the burdens of government*. (Emphasis supplied.)[50]

As noted above, in order to determine if its properties are entitled to a property tax exemption under MCL 211.7o, Petitioner must prove by a preponderance of the evidence that it is a "charitable institution." In this regard, the Michigan Supreme Court concluded that the institution's activities "as a whole" must be examined.[51] In *Michigan Baptist Homes and Dev Co v Ann Arbor*,[52] the Michigan Supreme Court stated that "exempt status requires more than a mere showing that services are provided by a nonprofit corporation." 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."[53]

Whether an institution is a charitable institution is a fact-specific question that requires examining the claimant's overall purpose and the way in which it fulfills that purpose. In this regard, the Michigan Supreme Court held in *Wexford,* that six factors must be considered in determining whether an entity is a charitable institution for purposes of MCL 211.7o(1). A claimant must meet all six of these tests in order to qualify as a nonprofit charitable institution. A failure to meet any of the six tests disqualifies a claimant from being considered a charitable institution and receiving a property tax exemption under MCL 211.7o(1). The tests are as follows:

> (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

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[50] *Retirement Homes*, 416 Mich 340 at 348–349, quoting *Jackson v Phillips*, 96 Mass (14 Allen) 539 (1867) and other cases subsequently adopting the same definition. *Retirement Homes*, 416 Mich App at 348-349 n. 14.
[51] *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 737 (1985).
[52] *Michigan Baptist Homes and Dev Co v Ann Arbor*, 396 Mich 660, 670; 242 NW2d 749 (1976).
[53] *Id.* at 671.

> charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.[54]

An analysis of whether Petitioner qualifies as a charitable institution requires a discussion of each of these factors.

(1) A "charitable institution" must be a nonprofit institution.

Respondent contends that Petitioner is an educational corporation under MCL 450.170, however, it also contends that "Under MCL 450.170, "[e]ducational corporations may be organized for profit or by trustee corporations if so provided."[55] Respondent has provided no evidence that Petitioner is a for-profit institution, however, Petitioner has provided copies of its income tax returns for exempt organizations[56] and a copy of its nonprofit corporation, Articles of Incorporation filed with the Michigan Department of Commerce.[57] Petitioner has also provided documentation that its housing, administrative buildings, classroom buildings, staff and degree programs are adequate and approved under MCL 450.170 and also filed the requisite amendment to its nonprofit corporation Articles of Incorporation, as required by the approval.[58] As such, the Tribunal finds this requirement met.

(2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.

(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.

The Tribunal finds there is overlap, in this matter, between Wexford Factors two and four and, as such, will discuss them together. The Tribunal finds Petitioner, a seminary, brings people's minds or hearts under the influence of education and religion, which under factor four, lessons the burden of government. Regarding factor two, the Tribunal finds Petitioner gives a gift: "For the 2016 fiscal year, the seminary has expenses of $10.81 million and received only 1.89 million from students in the form of housing payments."[59] Per Mr. Bardolph's affidavit, "The seminary's goal is to offer student housing that is 20 to 25% below market rate."[60]

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[54] *Wexford*, 474 Mich at 215.
[55] Respondent's Response at 3.
[56] Form 990, "Return of Organization Exempt From Income Tax." See Petitioner's Brief, Exhibits 17-19.
[57] Petitioner's Brief, Exhibit 2.
[58] Petitioner's Brief, Exhibit 4.
[59] Petitioner's Brief at 13, Exhibit 15.
[60] Petitioner's Brief, Exhibit 1, Bardolph Affi at ¶ 15,

"Because the below-market rate is so attractive to seminary students, the seminary's student housing units are always at or near 100% occupancy."[61] "[T]the seminary housing manager conducted an analysis of rental rates for comparable privately-owned properties near the Subject Properties."[62] The analysis showed lesser rates for the subject properties' apartments versus nearby housing.

"During the same time, [2016 fiscal year] the seminary gave 1.6 million in grants to 280 students and operated at a net loss of $143,660."[63] Petitioner also contends the seminary does not intend for its students to pay the full cost of their education and receives the majority of its funding from "donations, grants, gifts and denominational ministry shares, not by tuition or fees paid by its students. In 2016, for example, 70.95% of Calvin Seminary's revenue came from private gifts and from the Christian Reform Church."[64] Petitioner contends that students pay only approximately one-sixth of the total cost of their education. In *Wexford,* the Court found the nonprofit corporation provided the gift of reduced cost medical care.[65] Here, Petitioner's gifts include low-cost education through gifts and grants, and low-cost housing.

The Tribunal queries, however, though Petitioner gives gifts, is it organized chiefly, if not solely for charity? The Supreme Court has clearly stated that the inquiry for determining if an organization is entitled to a charitable exemption under MCL 211.7o must focus on whether the claimant as a whole is charitable "rather than whether the institution offers charity or performs charitable work."[66] The "overall nature" not "specific activities" is what is determinative.[67] "It is not enough . . . that one of the direct or indirect purposes or results is benevolence, charity, education, or the promotion of science."[68] In order to claim the exemption the claimant "must be organized chiefly, if not solely for one or more of these [charitable] objects." [69] If this matter, the Tribunal finds Petitioner is organized chiefly, if not solely, for the charitable object of education, and as such, it is organized chiefly, if not solely, for charity.

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[61] *Id*. at ¶ 16.
[62] *Id*. at ¶ 24, Exhibit 12.
[63] Petitioner's Brief at 13, referring to Exhibit 19.
[64] Petitioner's Brief, Exhibit 1, Bardolph Affi at ¶ 7.
[65] *Wexford*, 474 Mich at 217.
[66] *Id*. at 212.
[67] *Id.* at 213
[68] *Id*. at 204.
[69] *Id*. at 205.

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.

There is no allegation from either party that Petitioner offers its charity on a discriminatory basis. The seminary does not discriminate on the "basis of race, color, sex, age, national or ethnic origin, or disability, or on any other basis that is not reasonably related to its legitimate charitable goals."[70] Pursuant to the Michigan Supreme Court, factor three excludes only restrictions or conditions that bear no reasonable relationship to a permissible charitable goal.[71]

(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.

Here, there is no allegation from either party that this factor is not met. As such, the Tribunal finds Petitioner does not charge 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.

This factor eliminates any financial threshold of charity in order to qualify as a charitable institution. If the Tribunal finds the seminary to be a charitable institution, the amount of charity it gives is not relevant.

The Tribunal finds that Petitioner is a charitable institution because it exists for, and carries out, the purpose of giving a gift for the benefit of an indefinite number of people, by providing below-cost education and student/faculty housing to anyone who needs it without qualification, and it realizes no pecuniary gain from its activities. As such, it is entitled to an ad valorem tax exemption pursuant to MCL 211.7o(1). The Tribunal notes that Petitioner asserts its properties are exempt from the payment of property tax pursuant to MCL 211.7n and MCL 211.7s, and as such, the Tribunal will provide a brief discussion of the applicability of those

[70] Petitioner's Brief at 11, referring to Ex. 2, Articles at 1 and Ex. 1, Bardolph Affi at ¶ 5.
[71] *Baruch SLS, In. v Tittabawassee Twp*, 500 Mich 345; 901 NW2d 843 (2017).

exemption statutes to the properties at hand, even though it has already found the properties exempt under MCL 211.7o(1).

Educational exemption pursuant to MCL 211.7n :

MCL 211.7n provides, in part:

> Real estate or personal property owned and occupied by nonprofit . . . educational . . . institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act.

In *Engineering Society of Detroit v Detroit,*[72] the Court of Appeals set forth three criteria that must be met in order to qualify for an exemption as an educational institution under MCL 211.7n:

1. The real estate must be owned and occupied by the exemption claimant;

2. The exemption claimant must be a [nonprofit] . . . educational . . . 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.[73]

The court in *Ladies Literary Club v Grand Rapids,*[74] specified two requirements that must be met in order for an organization to qualify for an educational exemption from taxation:

1. An institution seeking an educational exemption must fit into the general scheme of education provided by the state and supported by public taxation.

2. The institution must contribute substantially to the relief of the educational burden of government.

In order to make a substantial contribution to the relief of the educational burden, the institution must show that "if [it] were not in existence, then ... a substantial portion of the student body

[72] *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944).
[73] The requirement that the claimant be incorporated under Michigan law is no longer valid, having been found to be unconstitutional, as it denied equal protection to institutions registered out-of-state. See *OCLC Online Computer Library Ctr, Inc v Battle Creek,* 224 Mich App 608, 612; 569 NW2d 676 (1997), citing *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp*, 186 Mich App 511, 515; 465 NW2d 14 (1990).
[74] *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 755-756; 298 NW2d 422 (1980).

who now attend that school [would and could] instead attend a State-supported [school.]" [75] The Tribunal will examine each of the requirements put forth above.

The real estate must be owned and occupied by the exemption claimant;

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.

As noted above, with regard to the identical occupancy requirements for exemption pursuant to MCL 211.7o, the Tribunal finds that Petitioner owns and occupies the subject properties and they are occupied solely for the purposes for which it was incorporated.

The exemption claimant must be a [nonprofit] . . . educational . . . institution.

Also as noted above, to qualify for exemption under MCL 211.7n, under current law, the seminary must fit into the general scheme of education provided by the state and supported by public taxation.[76] Such requirement was first put forth in *Detroit v Detroit Commercial College*,[77] where the Court held, because the institution seeking an exemption in that case was "a specialized school operated for the purpose of training its students to enter into specialized fields of employment," it was not entitled to a tax exemption as an "educational institution."[78] In *David Walcott Kendall Memorial School v Grand Rapids*, the Court of Appeals addressed the

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[75] *David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231, 240; 160 NW2d 778 (1968).

[76] The Michigan Supreme Court in *Harmony Montessori Center v City of Oak Park*, ___Mich ___; ___NW2d___ (2018), denied leave to Petitioner to appeal the Court of Appeals holding that the property of a Montessori School was unentitled to exemption from taxation pursuant to MCL 211.7n. *Harmony Montessori Center v City of Oak Park*, unpublished per curiam opinion of the Court of Appeals, issued October 13, 2016 (Docket No. 326870). In the Supreme Court Order, however, a concurrence by Chief Justice Markman was included in which he opined, "I believe that this Court's current interpretation of what constitutes an 'educational institution' under MCL 211.7n is a 'strained construction that is contrary to the Legislature's intent.'" (internal citations omitted). "In a future case, this Court should consider adopting a definition of 'educational institution' that is more consistent with the plain meaning of that phrase.'" "I also find no statutory basis for concluding that an entity is only an educational institution if it fits within the 'general scheme of education *provided by the state and supported by public taxation*.'" Finally, Justice Markman writes, "I welcome the opportunity in a future case to formulate a new standard for what constitutes an 'educational institution' that is more consistent with the plain meaning of that phrase and within the American educational tradition." Justice Markman concurred with the Order Denying Leave to Appeal "because petitioner has failed adequately to brief the specific issue raised by this Court in its order for supplemental briefing, which was 'whether *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 298 NW2d 422 (1980), and *David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231, 160 NW2d 778 (1968), continue to provide the appropriate test of what constitutes a 'nonprofit . . . educational . . . institution[ ]' under MCL 211.7n."

[77] *Detroit v Detroit Commercial College*, 322 Mich 142, 153, 33 NW2d 737 (1948).

[78] *Id.*

Detroit Commercial College relative to its specialized postsecondary school of art and design finding,

> To apply the rule of [that] case to the present case, we must find that even if a school exists, and is created or is expanded to meet the needs of these students in a specialized major field of advanced study which substantially parallels the same major field of study as a State supported college or university, tax exemption cannot be granted for that school. It must be a 'general educational institution'; not a 'special school.'[79]

In concluding that the property of the educational institution in *David Walcott* was exempt, the Court refined the *Detroit Commercial College* test, finding, "if the particular institution in issue were not in existence, then would, and could, a substantial portion of the student body who now attend that school instead attend a State-supported college or university to continue their advanced education in that same major field of study?"[80] The Court found,

> The probability of their attendance elsewhere on the college or university level would have to be derived *Inter alia* from the requirements for admission to the school seeking exemption, the qualifications of the student, the major field of study undertaken by the student, the time necessary to complete the prescribed course of study, and the comparative quality and quantity of the courses offered by the school to the same programs at the State colleges and universities. If such an institution is educating students qualified and willing to attend a State college or university, majoring in the same field of study, then it can be said that this institution is assuming a portion of the burden of educating the student which otherwise falls on tax-supported schools.

In *Ladies Literary Club*, the organization promoted trips to see museum exhibits, music festivals and plays, it sponsored lectures on antiques, music and poetry and conducted classes in painting, photography and yoga. The organization sought an educational exemption from taxation, however, the Court adopted the *David Walcott* test and found,

> It cannot be maintained that were it not for the Ladies Literary Club's programs, which enhance educational and cultural interests, the burden on the state would be proportionately increased. The club's programs do not sufficiently relieve the government's educational burden to warrant the claimed educational institution exemption.[81]

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[79] *David Walcott,* 11 Mich App at 238.
[80] *Id* at 240.
[81] *Ladies Literary Club*, 409 Mich at 755-756.

The Tribunal finds the seminary in this matter is a nonprofit educational institution, however, does it fit into the general scheme of education provided by the state and supported by public taxation? Further, does it make a substantial contribution to the relief of government? Petitioner contends the seminary offers academic training in many graduate programs including doctoral degrees in religious history and philosophical theology. It contends, "As of the fall of 2017, 86 (37%) of Calvin Seminary's 234 degree-seeking students, were in non-ministry, academic programs – that is, in the seminary's Ph.D., Master of Theology, or Master of Theological Studies programs."[82] Petitioner further contends that the academic qualifications for entry into the seminary's doctoral degree programs are similar to those required by similar programs at other institutions. Petitioner claims, "If the seminary did not exist, many of its non-ministry students could and likely would attend advanced-degree programs in philosophy or religious studies at public institutions."[83] Petitioner contends it offers classes in Hebrew and Greek, the history of Christianity, Jewish History, comparative world religions, philosophy, and religious perspectives on human sexuality, among others.

Respondent contends that the seminary provides religious instruction to prepare students to become ministers and as such, does not fit within the general scheme of education provided by the state. Respondent contends it could not find any courses at state funded universities that provided an education such as that put forth on Petitioner's website, an education "'whose center is Jesus Christ, God's Word in the flesh.'"[84]

The Tribunal finds Petitioner's teachings do not fit within the general scheme of education provided by the state and supported by public taxation. The Tribunal has considered Petitioner's academic catalog[85] and found the clear majority of classes are on subjects related only to Christianity and ministry, for example, individual Bible sections, such as Job, Isiah, Matthew, and Psalms. Other classes are entitled Ministry, Pastoral Care, Preaching, Essentials for Church Revitalization, and Christian Moral Tradition.[86] Courses in Hebrew and Greek are

[82] Petitioner's Response at 13, referring to Ex. 38, Supplemental Affidavit of Bardolph, at ¶ 4.
[83] Petitioner's Response at 13, referring to Ex. 38, Supp Affi at ¶ 6.
[84] See Respondent's Motion at 8, quoting Petitioner's website.
[85] Petitioner's Brief, Exhibit 7.
[86] *Id*. at Academic Catalog, pp. 45-58.

centered on learning those languages for the purpose of interpretation of Christian religious texts. For example,

> The Art of Hebrew Narrative Develops greater proficiency in comprehending biblical Hebrew and appreciating its literary artistry and its application in Old Testament exegesis through a careful reading of the Joseph narrative. Offers MDiv Students an opportunity to apply their knowledge of the original languages and understanding of biblical hermeneutics to the challenging task of communicating the message of the Psalter in an effective way in sermons.[87]

Further, the introductory letter to the seminary's course catalog clearly states that the seminary's mission is to prepare students to serve the Christian Reformed Church:

> Welcome to Calvin Theological Seminary! We have been praying for you and looking forward to your joining our hospitable community of faith and learning. According to our 'Vision Frame,' our mission is to be 'a learning community in the Reformed Christian tradition that forms church leaders who cultivate communities of disciples of Jesus Christ.' For 141 years, we have formed and prepared students to serve the church around the world as the church serves the mission of God.

Petitioner's Master in Theology program "is designed as a post-MDiv/MTS degree to introduce students to study and academic research in a specialized area of biblical, theological, or ministry studies, it is designed to give pastors and others the opportunity to extend their education and training in a particular field and to serve as excellent preparation for doctoral work."[88] The Master of Theological Studies program is "a flexible academic program designed to prepare you for further academic study or other careers that can be enriched by a strong theological education. You may also be interested in this program if you desire to understand the Christian faith more deeply."[89] The Doctor of Philosophy (PhD), "equips scholars for teaching and research in colleges, theological seminaries, and universities, as well as for general church leadership. Degrees are offered in the history of Christianity, systematic theology, philosophical theology, and moral theology, with concentrations in Reformation studies, post-Reformation Protestant theology, and modern and contemporary theology."[90]

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[87] *Id*. at 49.
[88] *Id*. at 27.
[89] *Id*. at 22
[90] *Id*. at 28.

Though there are classes offered at the seminary that the Tribunal finds could be offered at other universities, such, as "Recent Developments in Roman Catholic Theology," "The impact of Philosophy Since Kant on Theology," "Modern Pantheism", and "The Life and Thought of Augustine,"[91] the Tribunal finds the potentially interchangeable classes are not of sufficient quantity. In order to make a substantial contribution to relief of a governmental burden, *as the law now stands*, the seminary must show that "if [it] were not in existence, then ... a substantial portion of the student body who now attend that school [would and could] instead attend a State-supported [school.]" The Tribunal finds based on the classes it offers and its mission, a substantial portion of the student body would not, and could not, attend a state supported school for the same education. Therefore, overall, the Tribunal finds Petitioner did not prove by a preponderance of the evidence that its property is entitled to an exemption from taxation pursuant to MCL 211.7n.

Religious exemption pursuant to MCL 211.7s:

MCL 211.7s provides,

> Houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and any parsonage owned by a religious society of this state and occupied as a parsonage are exempt from taxation under this act. Houses of public worship includes buildings or other facilities owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the society.

With regard to the religious exemption from taxation, neither party alleges that the subject property is a parsonage. Petitioner, however, seeks an exemption from the payment of property tax for the subject properties, as a house of public worship, which includes buildings or other facilities owned by a religious society. Petitioner contends the controlling rule of law is "whether the entire property was used in a manner consistent with the purposes of the owning institution."[92] Petitioner further contends the courts have rejected the "quantum of use test" which means "that the exemption applies to properties even where religious instruction is not conducted within the property's four walls – as evidenced in *Institute in Basic Life Principles v*

[91] *Id.* at 55-57.
[92] Petitioner's Response at 15, quoting *Institute in Basic Life Principles v Watersmeet Twp*, 217 Mich App 7, 19; 551 NW2d 199 (1996).

Watersmeet Twp, which applied the exemption not only to the auditorium in which the religious organization held its worship services and instructional teaching, but also to lodging facilities, a gymnasium, a dining facility and biking paths."[93] Petitioner contends the subject properties are used to house students and faculty in service of Petitioner's religious and educational purposes. Petitioner also contends students prepare for seminary classes at the housing by studying and reflecting on religious and educational materials and the participating in Bible study and prayer meetings.[94]

Respondent contends *Institute* holds that "a facility owned by a religious society does not qualify for the houses of public worship exemption unless the facility is used for teaching religious truths and beliefs."[95] Further, while the Court rejected the "quantum of use" test, it "still evaluated how the plaintiff was using the property, and determined that the 'sprawling' facilities all served to 'teach[] the religious truths and beliefs of the society.'"[96] Respondent contends that in this matter, Petitioner has not presented any evidence that the properties are utilized for anything other than housing and are not utilized, predominantly or at all, for teaching its student-tenants any religious truths or beliefs.

The Tribunal finds in *Institute* the property included 1800 acres owned by a religious society. The society held seminars on the property to explain "how the Bible can provide guidance."[97] Petitioner is correct in that the property included an auditorium, lodging, dining room, gymnasium, and Respondent is correct that the undeveloped land is sprawling. The Court found all of the Institute's property was the exempt property of a religious society, regardless of the frequency of use.

In this matter, though the properties do not consist of acreage, it appears at first glance, under *Institute*, that the subject properties could be the exempt property of a religious society, however, the Court in *Congregation Mishkan Israel Nusach H'ari v City of Oak Park*,[98] provided further guidance with regard to the house of public worship exemption under MCL 211.7s, and found an apartment complex used to house students of a religious school was not

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[93] *Id.*
[94] Petitioner's Response at 16, Exhibit 38, Bardolph Supp Affi at ¶¶ 16-17.
[95] Respondent's Response at 14, quoting *Institute*, 217 Mich App at 14 n. 6.
[96] Respondent's Response at 16, quoting *Institute*, 217 Mich App at 19.
[97] Institute, 217 Mich App at 9.
[98] *Congregation Mishkan Israel Nusach H'ari v City of Oak Park*, unpublished per curiam opinion of the Court of Appeals, issued December 13, 2012 (Docket No. 306465).

exempt from taxation, as the property was not used predominantly for religious services or for the teaching of religious truths. The Court in *Congregation Mishkan* found the *Institute* case dealt primarily with whether Petitioner was a religious society and was not relevant to the student housing in its case.

In *Congregation Mishkan*, the students,

> Spend the great majority of their time engaging in religious study in the congregation's main synagogue structure which is across the street from the apartments. They also eat their meals and observe the rituals relevant to eating in the main synagogue structure. The students reside in the apartments; they sleep and conduct their personal hygiene in their respective apartments and keep their possessions there. They also use the apartments for study and some recreation. At the time relevant, 56 students lived in the apartments along with three dorm counselors who have undergone rabbinical training but are not yet ordained.[99]

Petitioner also presented testimony regarding its branch of Judaism's commandments on how to perform ordinary life tasks such as how one sleeps, awakens, dresses, and conducts personal hygiene, which activities would occur in the apartments. The three counselors resided in the property to supervise and mentor the students with regard to the performance of the rituals.[100]

The Court found that observing and practicing laws of faith, and being supervised over the same, does not equate to the apartments use predominantly for teaching religious truths and beliefs. The Court found the predominant function of the apartment complex was not teaching, but residential, and as such, it was not exempt from taxation. The Court considered *Michigan Christian Campus Ministries, Inc v Mount Pleasant*[101], where a Christian religious society owned a building where it housed Central Michigan University students that were observant Christians. The building was used by the students for housing as well as for "religious counseling, fellowship (group singing, prayer, and Bible study), religious teaching, sermons and sacraments." The Court, in rejecting the request for property tax exemption, concluded that the religious functions were "ancillary to the residential function rather than vice versa."[102]

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[99] *Congregation Mishkan* at 1.
[100] *Id*. at 2.
[101] *Michigan Christian Campus Ministries, Inc v Mount Pleasant*, 110 Mich App 787; 314 NW2d 482 (1981)
[102] *Id* at 792-793.

In *Congregation Yagdil Torah v City of Southfield*,[103] the Court considered an exemption request under section 7s for a dormitory for female seminary students. The property belonged to an Orthodox Jewish Congregation, some classes were held at the dormitory, but most at Petitioner's synagogue. The day at the dormitory "began with breakfast at the house and prayer at the synagogue at 8:45 a.m. The students typically remain at the synagogue for most of the day and return to the house at 6:00 p.m., followed by a class at the house at 7:45 p.m. The students observe religious services at the house on Friday nights."[104] The Court considered the facts of the *Yagdil Torah* case in relation to *Institute* and *Michigan Christian Campus* and found the property ineligible for a tax exemption as a house of public worship because it was used primarily as a residence was not used predominantly for the holding religious services or teaching religious truths and beliefs. In the matter before us, though there might be some studying and contemplation of religious texts at the properties or participation in Bible study or prayer groups, the properties are not utilized predominantly for religious services or for the teaching of religious truths and beliefs of the religious society. As such, the subject properties are ineligible for an ad valorem property tax exemption under MCL 211.7s for the 2017 tax year.

The Tribunal finds the subject properties are entitled to an exemption from property tax for the 2017 tax year under MCL 211.7o as the properties of a charitable institution. The properties, however, do not qualify for exemption as the properties of an educational institution under MCL 211.7n or of a religious society, under MCL 211.7s.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition pursuant to MCR 2.116 (C)(10) is GRANTED as there is no genuine issue of material fact and Petitioner is entitled to judgment as a matter of law.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition pursuant to MCR 2.116 (C)(10) is DENIED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect

[103] *Congregation Yagdil Torah v City of Southfield*, unpublished per curiam opinion of the Court of Appeals, issued July 22, 2014 (Docket No. 314735).
[104] *Id*. at 1.

the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.[105] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, and (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

[105] See MCL 205.755.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[106] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[107] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[108] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[109]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[110] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[111] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[112]

By Preeti P. Gadola

Entered: April 16, 2018

[106] See TTR 261 and 257.
[107] See TTR 217 and 267.
[108] See TTR 261 and 225.
[109] See TTR 261 and 257.
[110] See MCL 205.753 and MCR 7.204.
[111] See TTR 213.
[112] See TTR 217 and 267.