Michigan Crossroads Council,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-002671-R

Metamora Township,
Respondent.

Presiding Judge
Steven M Bieda

ORDER GRANTING PETITIONER'S MOTION TO FILE A REPLY

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S REQUEST FOR COSTS

INTRODUCTION

Petitioner filed this appeal disputing Respondent's denial of its claim for exemption from ad valorem property taxation under MCL 211.7q for the 2020 tax year.

On November 5, 2020, Petitioner filed a motion requesting that the Tribunal grant summary disposition in its favor. In the motion, which was filed pursuant to MCR 2.116(10), Petitioner contends that there are no genuine issues of material fact as to its eligibility for the requested exemption. As such, Petitioner is entitled to judgment as a matter of law. Petitioner also requested that the Tribunal award it costs, fees, and other such relief as the Tribunal believes is just and fair.

Respondent filed a response to the motion on December 1, 2020. In the response, Respondent contends there are genuine issues of material fact both with respect to the Tribunal's jurisdiction in this matter and Petitioner's status as a qualified scouting organization under MCL 211.7q. As such, Petitioner is not entitled to judgement as a matter of law and its request for summary disposition should be denied.

On December 9, 2020, Petitioner filed a motion requesting that the Tribunal grant it leave to file a reply to Respondent's response to its motion for summary disposition.

Respondent has not filed a response to the December 9, 2020 motion.

PETITIONER'S CONTENTIONS

Petitioner contends that it meets requirements for exemption under MCL 211.7q, which are that (1) the property must be owned by a scouting organization, and (2) at least 50% of the members of the organization or association must be residents of the state of Michigan. The exemption is limited to 480 times the number of boy scout organizations consolidated after December 30, 2008, and Petitioner, having been consolidated with ten other scouting organizations, is entitled to claim up to 5,280 acres of tax-exempt land. Petitioner is not an umbrella organization created as a result of consolidation as Respondent suggests, but an independent scouting organization and one of the eleven organizations consolidated into a single authority. Further, Petitioner has established that it does not intend to seek exemption for more than the 5,280 acres allowed under the law, inclusive of the subject 480 acres.

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner did not request an exemption from Respondent's Board of Review. No petition or communication to the March Board of Review was ever filed. Petitioner's February 5th letter was submitted to the assessor before the assessment notices for the subject parcels were issued and request for review from an assessor in advance of the assessment notice is properly answered in the notice. Further, Petitioner is not a qualified scouting organization under MCL 211.7q. Petitioner was formed in 2012 to receive the assets of ten legacy councils and consolidate those councils under a new name and unitary authority in 2013, and consolidation was of the ten legacy councils into one new consolidating entity, not of eleven functioning individual scouting councils.

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.[1]

Motions for Summary Disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when "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."[2] The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,[3] 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,

[1] See TTR 215.
[2] *Id*.
[3] *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).

> and the moving party may satisfy the burden in one of two ways.
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> 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.
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> 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).
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> 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.[4]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[5] In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary judgment."[6] "Instead, the court's task is to review the record evidence, and all reasonable inferences there from, and decide whether a genuine issue of any material fact exists to warrant a trial."[7]

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[4] *Id*. at 361-363. (Citations omitted.)
[5] *West v General Motors Corp*, 469 Mich 177 (2003).
[6] *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 1 (1994).
[7] *Id.*

CONCLUSIONS OF LAW

The Tribunal has considered the motions, response, and case file and finds that Respondent's response to Petitioner's Motion for Summary Disposition is untimely pursuant to TTR 225, and as a result, is not properly pending before the Tribunal.[8] The response raises jurisdictional questions, however, and lack of "jurisdiction is so serious a defect in the proceedings that a tribunal is duty-bound to dismiss a plaintiff's claim even if the defendant does not request it."[9] Further, jurisdictional issues may be raised at any time under the Tribunal's Rules of Practice and Procedure.[10] The Tribunal finds that consideration of both the response and Petitioner's reply will facilitate a reasoned decision on Petitioner's motion for summary disposition, and both will therefore be considered in the rendering of this order.

On the issue of jurisdiction, Respondent contends that Petitioner did not request an exemption from Respondent's Board of Review. Respondent contends that Petitioner's February 5, 2020 letter was submitted to its assessor prior to the assessment notices for the subject parcels being issued, and that no petition or communication to the March Board of Review was ever filed. Petitioner contends that the assessment notices were not issued until March 17, 2020, however, after the March Board of Review meeting on March 11 and 12, 2020. As such, to the extent that a March Board of Review protest was required, it was satisfied by Petitioner's February letter.

The submitted documentation establishes that Petitioner's February 5, 2020 letter was directed to Respondent's assessor and not the Board of Review as contended by Respondent, and Petitioner does not dispute this fact. Petitioner suggests that the assessor was required to deliver this letter to the Board of Review but does not cite any authority in support of this contention and the Tribunal finds none. Nevertheless, the documentation also supports Petitioner's claim that the assessment notices for the subject parcels were issued on March 17, 2020 and received by Petitioner on March 20, 2020. Respondent has not provided any evidence to the contrary, and inasmuch as the notices indicate that Respondent's Board of Review met March 11-12, 2020, the Tribunal finds that they were sent in violation of MCL 211.24c(4). This statute states that "the assessment notice shall be . . . mailed not less than 14 days before the meeting of the board of review." Although "the failure to send or receive an assessment notice does not invalidate an assessment roll or an assessment on that property," it does potentially deny the taxpayer due process. In *Parkview Mem Ass'n v City of Livonia,*[11] the Michigan Court of Appeals held:

> [The] notices of assessment were sent in violation of MCL 211.24c(5) . . . . Under that statute the assessments remain valid. Nevertheless, respondents' late notices were not given in a manner reasonably

[8] See *Pars Ice Cream Company, Inc v Dep't of Treasury*, unpublished per curiam opinion of the Court of Appeals, issued June 28, 2012 (Docket No. 305148).
[9] *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW 2d 215 (2002).
[10] See TTR 229.
[11] *Parkview Mem Ass'n v City of Livonia,* 183 Mich App 116 (1990).

> calculated under all the circumstances to apprise petitioners of the assessments and to afford them an opportunity to be heard. Petitioners will thus be denied due process unless they are given an opportunity to be heard. Under the Supreme Court's *Burnside* decision, petitioners are not entitled to challenge the assessments in circuit court despite respondents' improper notice. Based on these considerations and consistent with the Supreme Court's *Burnside* decision, we conclude that petitioners' claims should be heard by the Tax Tribunal.[12]

In *Michigan State Univ v City of Lansing*,[13] the Court, noting that *Parkview* considered "the requirements of MCL 205.735 . . . as procedural requirements for the perfection of an appeal,"[14] further held:

> We recognize that *Parkview* is not binding authority under MCR 7.215(J)(1) and that later binding cases from this Court have stated generally that the requirements of MCL 205.735 are jurisdictional and must be satisfied in order for the MTT to invoke its subject-matter jurisdiction. *Parkview,* however, is directly and more on point as it specifically addresses the failure to provide timely notice that would have allowed a party to meet the requirements of MCL 205.735 and it must be remembered that *Parkview* was predicated on a Supreme Court decision which is, of course, binding precedent that trumps opinions emanating from this Court. The due process concerns enunciated in *Parkview* are compelling. If a taxing authority can avoid board and tribunal review of assessments by mailing untimely notices, a property owner's due process rights are unquestionably impaired.[15]

The Tribunal agrees with the reasoning set forth in these two opinions and Petitioner's appeal must therefore be heard before this Tribunal.

Substantively, Respondent contends that Petitioner is not a qualified scouting organization under MCL 211.7q. In that regard, the Tribunal notes that the General

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[12] *Id*. at 120 (Citations omitted).
[13] *Michigan State Univ v City of Lansing*, unpublished per curiam opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 250813).
[14] "This Court . . . stated that it considered the 'jurisdictional' requirements of MCL 205.735 to . . . be 'procedural requirements for perfecting an appeal in the Tax Tribunal.' The panel found the board protest requirement to be a codification of the doctrine of exhaustion of remedies and the June 30 deadline to be a statutory time limitation. Neither doctrine, according to the Court, is a limitation on the subject-matter jurisdiction of the tribunal before which the claim is asserted. The Court concluded: 'Considering the requirements of MCL 205.735 . . . as procedural requirements for the perfection of an appeal of an assessment is consistent with the remedy fashioned for the plaintiffs in the Supreme Court's *Burnside* decision. It affords taxpayers such as petitioners and the *Burnside* plaintiffs, who demonstrate that they have been deprived of notice of an assessment in time to protest before the board of review, an opportunity to obtain a review of the assessment in the Tax Tribunal.'" *Id., quoting Parkview,* 183 Mich App at 121 (Citations omitted).
[15] *Id*. (Citations and footnote omitted).

Property Tax Act ("GPTA") provides that "all property . . . within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."[16] There is no dispute that the subject property, but for any exemption afforded, is subject to ad valorem taxation.[17] Exemption statutes are subject to a rule of strict construction in favor of the taxing authority.[18] The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption.[19] Nevertheless, tax exemption statutes are to be interpreted according to ordinary rules of statutory construction.[20] "[T]he preponderance of the evidence standard applies when a petitioner attempts to establish membership in an already exempt class."[21] Nonprofit religious and educational organizations, nonprofit charitable institutions, parsonages, and houses of public worship have all been recognized as exempt classes.[22]

MCL 211.7q creates an exemption for boy scout and like organizations. It states, in pertinent part, that "real property owned by a boy or girl scout or camp fire girls organization . . . is exempt from the collection of taxes under this act, if at least 50% of the members of the association or organization are residents of this state."[23] The exemption is limited and "not to exceed 480 acres for each individual boy or girl scout or camp fire girls organization . . . ."[24] However,

> if a boy or girl scout or camp fire girls organization . . . reorganizes, merges, affiliates, or in some other manner consolidates with another boy or girl scout or camp fire girls organization . . . after December 30, 2007, the total exemption available under subsection (1) to the consolidated or surviving entity shall be 480 acres times the number of individual boy or girl scout or camp fire girls organizations . . . that took part in the reorganization, merger, affiliation, or consolidation.[25]

The documentation filed with Petitioner's Motion for Summary Disposition, specifically, the affidavit of its CEO, Donald D. Shepard, Jr., establishes that Petitioner is a scouting organization that was incorporated in Michigan on February 1, 2012, that it holds a national charter from the Boy Scouts of America, and that it is the lone authorized council for the Boy Scouts of America in the Lower Peninsula of Michigan. The affidavit further establishes that Petitioner consolidated with ten other Michigan boy scout councils, one of which is the record owner of the property at issue, Detroit Area Council of Boy Scouts of America. The affidavit also establishes that "most, if not all, of [Petitioner's] membership is comprised of individuals who reside permanently in the

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[16] See MCL 211.1.
[17] See *Michigan Bell Telephone Company v Dep't of Treasury*, 229 Mich App 200; 582 NW2d 770 (1998).
[18] See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661; 378 NW2d 737 (1985) and *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 MW2d 422 (1980).
[19] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490 (2002).
[20] See *Inter Cooperative Council v Dep't of Treasury*, 257 Mich App 219 (2003).
[21] *ProMed Healthcare*, 249 Mich App at 494-495.
[22] See Article 9, Section 4 of the Michigan Constitution; MCL 211.7o; and MCL 211.7s.
[23] MCL 211.7q(1).
[24] MCL 211.7q(2).
[25] *Id*.

State of Michigan." The Officer's Certificate filed with the petition establishes that the eleven organizations were consolidated after December 30, 2007, and that the total acreage being claimed as exempt by Petitioner is 5,177.56 acres.

Respondent notes that Petitioner's First Restated Articles of Incorporation indicate that it had no real property assets and personal property assets of only $10.00 cash as of May 1, 2012. From this, Respondent infers that Petitioner was formed as an umbrella or shell organization to receive the assets of the legacy councils and consolidate them under a new name and unitary authority. The Articles specifically state, however, that Petitioner's purpose "is to receive and administer funds for the benefit of, and to otherwise support, promote, advance and provide . . . the Scouting program of promoting the ability of boys and young men and women to do things for themselves and others, training them in Scoutcraft, and teaching them patriotism, courage, self-reliance, and kindred virtues, using the methods which are in common use by the Boy Scouts of America." Moreover, the Shepard affidavit and Officer's Certificate both unequivocally establish that Petitioner is the holder of a charter issued by the national office of the Boy Scouts of America. Absent some legal authority establishing that Petitioner's assets impact its status as a chartered Boy Scout organization, the Tribunal cannot conclude that a genuine issue of material fact exists on this issue.

Given the above, the Tribunal finds that Petitioner has met its burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. Respondent has failed to rebut Petitioner's documentation or otherwise establish the existence of a genuine issue of material fact, and as a consolidated organization comprised of eleven individual organizations, Petitioner is entitled to exemption on not more than 5,280 acres of land. As such, Petitioner is entitled to judgment as a matter of law under MCR 2.116(C)(10).

As for Petitioner's request for costs, the Tribunal "may, upon motion or its own initiative, award costs in a proceeding . . . ."[26] The Michigan Court Rules and Administrative Procedures Act provide the Tribunal with some criteria in determining whether an award of costs is appropriate, but the Court of Appeals has held that costs are entirely within the Tribunal's discretion, and it is not limited to circumstances where the requesting party shows good cause or the action or defense was frivolous.[27] The Tribunal is nevertheless generally hesitant to award costs, and usually reserves such action for cases in which frivolity or other good cause exists.

"A claim is frivolous when (1) the party's primary purpose was to harass, embarrass, or injure the prevailing party, or (2) the party had no reasonable basis upon which to believe the underlying facts were true, or (3) the party's position was devoid of arguable legal merit."[28] " "A claim is not frivolous merely because the party advancing the claim

[26] TTR 209.
[27] See *Aberdeen of Brighton, LLC v Brighton*, unpublished per curiam opinion of the Court of Appeals, issued October 16, 2012 (Docket No. 301826), which noted that "the term 'may' is permissive and is indicative of discretion." *Id*. citing *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492 (2007).
[28] *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266-267 (1996) citing MCL 600.2591(3)(a).

does not prevail on it."[29] A court must determine whether a claim or defense is frivolous on the basis of the circumstances at the time it was asserted."[30] "[A] claim is devoid of arguable legal merit if it is not sufficiently grounded in law or fact, such as when it violates basic, longstanding, and unmistakably evident precedent."[31]

Given the facts and circumstances presented in this case the Tribunal finds that Respondent's defense was not interposed for any improper purpose and it was sufficiently grounded in fact. Further, the Tribunal cannot conclude that it violates basic, longstanding, and unmistakably evidence precedent. As such, and in the absence of a showing of other good cause to justify the granting of Petitioner's request, the Tribunal is not satisfied that costs are warranted in the instant appeal.

Therefore,

Parcel Nos. 015-012-014-00, 015-011-001-20, & 015-011-001-10 shall be granted an exemption under MCL 211.7q for the 2020 tax year; the amount of the exemption is 100%.

The property's taxable value (TV), as established by the Board of Review for the tax year at issue, is as follows:

Parcel Number: 015-012-014-00

Year	TV
2020	$113,380

Parcel Number: 015-011-001-20

Year	TV
2020	$227,340

Parcel Number: 015-011-001-10

Year	TV
2020	$341,013

The property's taxable value (TV), for the tax year at issue, shall be as follows:

Parcel Number: 015-012-014-00

Year	TV
2020	$0

Parcel Number: 015-011-001-20

Year	TV
2020	$0

[29] *Adamo Demolition Co v Dep't of Treasury,* 303 Mich App 356, 368 (2013).
[30] *Meisner Law Group, PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 732 (2017).
[31] *Adamo Demolition,* 303 Mich App at 369 (2013) (quotation marks and citations omitted).

Parcel Number: 015-011-001-10

Year	TV
2020	$0

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Petitioner's Motion for Leave to File a Reply is GRANTED.

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

IT IS FURTHER ORDERED that Petitioner's Request for Costs is DENIED.

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[32] 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%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (xiii) after June 30, 2020, through December 31, 2020, at the rate of 5.63%, and (xiv) after December 31, 2020, through June 30, 2021, at the rate of 4.25%.

[32] See MCL 205.755.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this 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.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision.[33] 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.[34] You are required to serve a copy of the motion 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.[35] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[36]

A claim of appeal must be filed with the Michigan Court of Appeals 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."[37] You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal.[38] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[39]

Entered: January 20, 2021 By _____
ejg

[33] See TTR 261 and 257.
[34] See TTR 217 and 267.
[35] See TTR 261 and 225.
[36] See TTR 261 and 257.
[37] See MCL 205.753 and MCR 7.204.
[38] See TTR 213.
[39] See TTR 217 and 267.