

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

Father Murray Nursing Center,
Petitioner,

v

MTT Docket No. 293280

City of Center Line,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

OPINION AND JUDGMENT

The issue in this case is whether real and personal property owned by Petitioner, Father Murray Nursing Center, is exempt from ad valorem property taxes under MCL 211.7o (real or personal property owned and occupied ...by nonprofit charitable institution or charitable trust), MCL 211.9(a) (personal property owned by charitable institutions, etc.) and/or MCL 211.7r (real estate, building, and other property used for ...public health purposes). The properties' true cash values and state equalized values are not in contention.

Petitioner is a Michigan nonprofit corporation that owns and operates a 231 bed skilled nursing facility. The property in question (the "subject property") consists of one parcel of real property (Parcel No. 50-13-22-376-023) and one parcel of personal property (Parcel No. 50-13-00-000-016). The subject property is located at 8444 Engleman, Center Line, Michigan. Respondent, City of Center Line, is responsible for establishing the subject property's assessment. Respondent also levies and collects property taxes.

This appeal was filed for the 2002 tax year. A Motion to Amend to add the 2003 tax year was granted. Pursuant to MCL 205.737(5)(a), "...if the tribunal has jurisdiction over a petition

alleging that the property is exempt from taxation, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from the appeal at the time of the hearing on the petition.” In the instant case, such a request was not made. As such, the 2004 tax year was automatically added to this appeal.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner has proven by a preponderance of the evidence that it is a charitable organization pursuant to MCL 211.7o and MCL 211.9(a). Moreover, the Tribunal finds Petitioner has proven by a preponderance of the evidence that the subject property is used for public health purposes. As such, the subject property is exempt from ad valorem property taxes for the 2002, 2003 and 2004 tax years. The subject property’s true cash values (TCV), state equalized values (SEV) and taxable values (TV), as determined by Respondent, are:

Parcel Number: 50-13-22-376-023

Year	TCV	SEV	TV
2002*	\$2,150,600	\$1,075,300	\$834,970
2003*	\$2,150,600	\$1,075,300	\$847,494
2004*	\$2,150,600	\$1,075,300	\$866,986

Parcel Number: 50-13-00-000-016

Year	TCV	SEV	TV
2002*	\$307,278	\$153,639	\$153,639
2003	\$1,093,240	\$546,620	\$546,620
2004	\$1,027,946	\$513,973	\$513,973

* Respondent applied a 25% exemption in these tax years by assessing the subject property at 25% instead of 50% of TCV. (Transcript, pp 260-266)

The subject property’s true cash values (TCV), state equalized values (SEV) and taxable values (TV), as determined by the Tribunal, are:

Parcel Number: 50-13-22-376-023

Year	TCV	SEV	TV
2002	\$4,301,200	\$2,150,600	-0-
2003	\$4,301,200	\$2,150,600	-0-
2004	\$4,301,200	\$2,150,600	-0-

Parcel Number: 50-13-00-000-016

Year	TCV	SEV	TV
2002	\$614,556	\$307,278	-0-
2003	\$1,093,240	\$546,620	-0-
2004	\$1,027,946	\$513,973	-0-

PETITIONER’S CASE

Petitioner is a Michigan nonprofit corporation. The corporation’s name is Saratoga Nursing Center, operating under the assumed name of Father Murray Nursing Center. (P8¹) The Internal Revenue Service has determined that Petitioner is a 501(c)(3) organization and, as such, Petitioner is exempt from federal income tax. (P7) The subject property consists of one parcel of real property: Parcel No. 50-13-22-376-023, which was purchased by Petitioner in 1985. (P1) The subject property also contains one parcel of personal property: Parcel No.50-13-00-000-016. Located on the subject property is a skilled nursing facility and parking facilities, with medical equipment, furniture and fixtures. (T², p39)

¹ “P” denotes Petitioner’s exhibits; “R” denotes Respondent’s exhibits.

² “T” denotes transcript.

Petitioner argues that the subject property is exempt from property taxes levied under the General Property Tax Act, being MCL 211.1, *et seq.* More specifically, Petitioner argues that the subject property is exempt under MCL 211.7r, MCL 211.7o and MCL 211.9(a).

PETITIONER'S EXHIBITS

The following exhibits were stipulated to and admitted into evidence:

- *Exhibit 1:* A Warranty Deed conveying ownership of subject real property to Saratoga Nursing Center.
- *Exhibit 2:* The Notice of Licensure/Certification effective January 1, 2001 from State of Michigan, Department of Consumer & Industry Services, Division of Health Facility Licensing and Certification Field Services Section. Pursuant to this Notice, Petitioner has 231 certified beds and 52 dually certified beds.
- *Exhibit 3:* An Amended Notice of Licensure/Certification effective January 4, 2002 from State of Michigan, Department of Consumer & Industry Services, Division of Nursing Home Monitoring.
- *Exhibit 4:* The Notice of Licensure/Certification effective July 1, 2002 from State of Michigan, Department of Consumer & Industry Services, Division of Nursing Home Monitoring. Pursuant to this Notice, all 231 of Petitioner's beds are dually certified.
- *Exhibit 5:* The Notice of Licensure/Certification effective February 11, 2003 from State of Michigan, Department of Consumer & Industry Services, Division of Nursing Home Monitoring.
- *Exhibit 6:* The Notice of Licensure/Certification effective February 20, 2004 from State of Michigan, Department of Consumer & Industry Services, Division of Nursing Home Monitoring.

- *Exhibit 7:* A letter to Father Murray Nursing Center from Robert Johnson, IRS District Director, confirming continued exempt status, dated April 20, 1992.
- *Exhibit 8:* Saratoga Nursing Center's (assumed name Father Murray Nursing Center) Amended and Restated Articles of Incorporation dated January 10, 2001.
- *Exhibit 9:* St. John Health Corporation's Amended and Restated Articles of Incorporation dated September 2, 1993.
- *Exhibit 10:* A letter to St. John Health System from C. Ashley Bullard, IRS District Director, confirming Petitioner's continued exempt status, dated December 4, 1995.
- *Exhibit 11:* Ascension Health's Amended and Restated Articles of Incorporation dated September 17, 2001.
- *Exhibit 12:* Ethical and Religious Directives for Catholic Health Care Services, Fourth Edition, issued June 15, 2001, by the United States Conference of Catholic Bishops.
- *Exhibit 13:* "Feels Like Home" Brochure from Father Murray Nursing Center.
- *Exhibit 14:* St. John Health and Father Murray Nursing Center admissions notebook.
- *Exhibit 15:* Amended and Restated Bylaws of Father Murray Nursing Center, dated August, 2000.
- *Exhibit 16:* Petitioner's Michigan Department of Treasury Sales Tax exemption letter, effective January 1, 1990.
- *Exhibit 17:* Father Murray's Long Term Care Financial Parameters for the months ending June 30, 2002 and June 30, 2003.
- *Exhibit 18:* 2002, 2003 and 2004 City of Center Line Board of Review Decisions for the subject properties.

- *Exhibit 19:* A copy of the Order Granting Petitioner's Motion for Summary Disposition in *Michigan State University v Lansing*, MTT Docket Nos. 286639, 293616, dated August 19, 2003.
- *Exhibit 20:* Father Murray Nursing Home's Income Statement for the Twelve Months Ended June 30, 2001.
- *Exhibit 21:* Father Murray Nursing Home's Consolidated Comparative Income Statement for the Twelve Months Ended June 30, 2003.
- *Exhibit 22:* Father Murray Nursing Home's Consolidated Comparative Income Statement for the Twelve Months Ended June 30, 2003.
- *Exhibit 23:* Father Murray Nursing Home's Consolidated Comparative Income Statement for the Nine Months Ended March 31, 2004.
- *Exhibit 24:* City of Center Line's 2004 worksheets for the subject personal property.
- *Exhibit 25:* A copy of the Consent Judgment in *Saratoga Nursing Center d.b.a. Father Murray Nursing Center v City of Center Line*, MTT Docket No. 103258, entered July 26, 1998.
- *Exhibit 26:* A copy of the Stipulation for Entry of Consent Judgment in *Saratoga Nursing Center d.b.a. Father Murray Nursing Center v City of Center Line*, MTT Docket No. 146105, entered April 5, 1991.

PETITIONER'S WITNESSES

Petitioner presented testimony from several witnesses. This testimony is summarized as follows:

1. Michael Richards: Michael Richards is the administrator at the Father Murray Nursing Center. In this position, he is responsible for Father Murray's day-to-day operations. Mr. Richards reports to Father Murray's Board of Directors.

Mr. Richards described Petitioner as being organized on a non-stock, membership basis. (P8) According to Mr. Richards, Petitioner is a wholly owned subsidiary of St. John Health, which is also a Michigan nonprofit corporation exempt from federal income tax under 501(c)(3). (P8-10) (T, p32 and 127) In turn, St. John Health is the only member of Ascension Health, a Missouri nonprofit corporation, exempt from federal income tax under 501(c)(3). (P11) (T, p32) Mr. Richards stated that the mission of St. John Health and Ascension Health is "...to provide health care services to the poor and underserved predominantly through general acute care hospitals, skilled nursing facilities, home care agencies...." (T, p33)

Mr. Richards testified that Petitioner's Amended and Restated Articles of Incorporation set forth its purpose, which is to:

...carry out programs for the care and treatment and habitation of the sick, infirm, and aged...provide, on a nonprofit basis, nursing home facilities and services for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care where no adequate housing exists for such groups...to provide elderly persons and handicapped persons with housing facilities and services specially designed to meet their physical, medical and psychological needs, and to promote their health, serenity, happiness and usefulness in longer living, the charges for such facilities and services to be predicated upon the provision, maintenance and operation thereof on a nonprofit basis where no adequate housing exists for such groups...and to provide residential facilities providing room, board and continuous protective oversight to residents of the facility where no adequate housing exists for such groups...promote and carry on scientific research with respect to the cause, treatment, and prevention of illness and injury and improvement of public health...participate in and carry on activities for the education of physicians, nurses and other professionals and paraprofessional personnel, and the public about rendering care to the sick, injured and disabled, about prevention of illness and injury, and about promotion of health. (P8 and T, pp34-35)

Mr. Richards further testified that Article 5-A of its Articles of Incorporation states that “[t]he corporation shall be operated exclusively for charitable, scientific, and educational purposes as a nonprofit corporation, and essentially it says that no one person will gain financially or otherwise from the operation of Father Murray Nursing Center.” (P8 and T, pp35-36) Moreover, Petitioner, as a Catholic institution, has a “Biblical mandate” to care for the poor. (T, p38) This mandate

...requires us to express this in concrete actions in all levels of Catholic health care. The mandate prompts us to work to ensure that our country’s health care delivery system provides adequate health care for the poor. In Catholic institutions particularly attention should be given to the health care needs of the poor, the underinsured and the uninsured. (P12 and T, p38)

Mr. Richards described Petitioner as a 231 bed, skilled nursing facility licensed and regulated by the Michigan Department of Community Health and Public Health Code. (T, p41) Mr. Richards stated that in January 2002, Petitioner had 52 Medicare beds and that all 231 beds were certified and licensed for Medicaid. (T, p42) Beginning in July 2002, all 231 beds were certified and licensed for both Medicare and Medicaid. (P3-5 and T, pp42-43)

Mr. Richards testified that Petitioner provides patient care 24 hours a day, seven days a week. (T, p41) When asked to describe Petitioner’s staff, Mr. Richards stated that there are two attending physicians who “...are available seven days a week by phone and actually on site five days a week.” (T, p45) Additionally, Petitioner has “...round the clock nursing care, RNs on every shift, three shifts a day, seven days a week, and we also have a large number of licensed practical nurses.” (T, p46) Additionally, Petitioner has “...238 staff members that work...three shifts...a full complement of nursing professionals and an interdisciplinary team that includes social services and physical therapy, occupational therapy, speech pathology, dietary services, so

it's a full interdisciplinary team that works three shifts." (T, p46) Petitioner also contracts for pharmacy services that are available seven days a week, 24 hours a day. (T, p48)

Petitioner admits patients on a first-come, first-served basis, with the patient turnover rate averaging 35 to 40 persons per month. (T, pp72, 75) However, patients are admitted to Petitioner's facility only upon the recommendation or referral of physicians licensed to practice in Michigan; persons cannot be admitted without a physician order for skilled nursing services. (P14 and T, pp145-146) Mr. Richards stated that almost all of Petitioner's patients come directly from hospitals, while some patients come from their homes, nursing homes, and independent or assisted living facilities. (T, p52)

Under Petitioner's admission policy, applications for admission are received without regard to race, color, national origin, religion, marital status, sexual preference, handicap, or age. (P14 and T, p67) However, Petitioner will not accept applicants 15 years old or younger, with active tuberculosis, or with a mental condition that could create a disturbance to others or physically harm others. Mr. Richards stated that Petitioner has a specialty unit, called Murray Manor, which provides care for up to 42 Alzheimer's patients. (T, p50) Finally, Petitioner does not admit patients with some types of medical conditions, such as closed head injuries, because it does not provide the necessary level of care. (T, pp67-68)

Next, Mr. Richards was asked a series of questions to establish that the subject property is used for a public health purpose. When asked if Petitioner protects and improves community health, Mr. Richards responded: "Oh, yes, most definitely we do." (T, p56) According to Mr. Richards, Petitioner protects and improves community health by means of preventative medicine for its patients. (T, p56) Mr. Richards testified that Petitioner also meets the mental health needs of the community by contracting with Macomb County Community Mental Health Services to

screen particular people with certain diagnoses before they become residents at Father Murray.

(T, p57)

Petitioner also protects and improves community health through health education, working with Oakland University, the Red Cross and the Krammer School to provide on-site training for students. (T, p59) Mr. Richards testified Oakland University has a program in which 12 to 14 students working toward a degree in nursing (RNs and LPNs) participate in "...about six rotations....During those six rotations they'll spend up to 32 hours on the clinical units and clinical site...." (T, pp79-80) Working with the Red Cross, Krammer Schools and Hazel Park Adult Education, Petitioner provides a place for nurses' aide training. (T, p80) Mr. Richards estimated that all of these students work approximately 8,000 hours per year at Father Murray. They are not compensated for their time. (T, pp80-81)

Petitioner also improves community health by providing education as to the Norwalk Virus and education about nursing homes, Medicaid and Medicare to area hospitals and independent and assisted living facilities. (T, p59, 86) Petitioner provides this same education to the residents of the Dunn Residence, a low income housing residence, five or six times a year. (T, pp59, 85) Mr. Richards testified that Petitioner has a full-time registered nurse on staff, the coordinator of education services, who focuses her time on educating staff, residents and families about health. (T, pp60, 81)

Petitioner also protects and improves community health through communicable disease control. Mr. Richards testified that Petitioner employs a full-time registered nurse who devotes her time to the infection control program and process, focusing on such diseases as tuberculosis, hepatitis and CDIF. (T, p60) Mr. Richards stated that this program is mainly dedicated to inpatients. (T, p174) However, Mr. Richards also stated that Petitioner's influenza and

pneumococcal immunization programs are available not just to its residents and staff, but also to the community. (T, p61) Mr. Richards indicated that these immunization programs are advertised in schools, at St. Clement's church, and on a six-by-four communication board in its main lobby. (T, pp62, 162) Petitioner charges a small fee for residents and their families who participate in the immunization program, but that charge is usually reimbursed through Medicare Part B. If no Medicare Part B payor source is available, then the immunization is free. (T, pp62-63) Finally, Petitioner engaged in research by participating with the University of Michigan's influenza study to measure the effectiveness of a new drug called "Tamiflu" during 2001, 2002 and part of 2003. (T, pp64, 84-85) Mr. Richards testified that this clinical study was limited to skilled nursing facilities. (T, p167)

Petitioner also employs a registered nurse in the position of associate administrator. This person "...has a training initiative for cardiopulmonary resuscitation, CPR. She's a trained expert in that area. She actually goes to area hospitals and does that training for the CPR and she'll train our staff in addition...." (T, p90)

According to Mr. Richards, Petitioner also employs a licensed nursing home administrator in the position of Director of Continuum of Care. The Director "...spends time right at the hospitals every day working directly with social workers, discharge planners, family members, and potential residents to educate them about Medicaid and Medicare services, the services that our facilities provide, and how to access services and plan for the next step in their care." (T, p82) The Director also visits independent and assisted living facilities as many as 24 times a year to educate them about Medicare and Medicaid services. (T, p86)

Mr. Richards briefly discussed “The Center for Medicare Services” and the quality measures that it publishes for skilled nursing facilities. Mr. Richards described how he participates in community education by educating the public as to these measures. (T, p83)

Mr. Richards also discussed a newsletter, titled “St. John CareLink,” that is distributed monthly free-of-charge to over 90,000 senior citizens. (T, pp83-84) Additionally, Petitioner has an outreach program in which it makes the community aware of its skilled nursing services. (T, p87-88) Other activities include school programs with intergenerational activities, a volunteer program, a pastoral care program, and programs with St. Clement’s Catholic Church. Mr. Richards estimated that each year volunteers contribute 10,000 hours of time to Petitioner.

Petitioner also participates in various community events, including the Area Agency on Aging’s Senior Expo, health fairs, and senior fairs and expos. (T, p88) At these events, Petitioner hands out brochures that contain pictures of the subject property and information about Father Murray, such as the care and services available and the types of payment. (T, p89) Approximately 1,200 to 1,500 brochures are distributed each year. (T, p89)

Petitioner’s counsel then turned to the issue of whether Petitioner qualifies as a nonprofit charitable institution. First, Mr. Richards was asked to describe the types of payment Petitioner receives for the care provided to its patients. Mr. Richards testified that the payment sources include Medicare, Medicaid, private pay and third party insurance. (T, p68) When asked whether Petitioner makes “...decisions on admission based on the type of payment or the ability to pay,” Mr. Richards responded: “No, we do not.” (T, p71) Mr. Richards explained that while Petitioner may get some preliminary information before a patient is admitted regarding that patient’s payor source, it does not verify this source until after admission and at no time requires

proof of an applicant's ability to pay. (T, pp69-70) Mr. Richards further explained that private pay patients, but no others, are required to make an advance deposit. (T, p94)

According to Mr. Richards, most of Petitioner's patients come from at least a three day stay in a hospital and are over the age of 65, so they are automatically enrolled in Medicare. (T, pp71, 180) If a patient is unable to pay for his or her care, Petitioner works with that person to apply for Medicaid. (T, p71) While the maximum Medicare coverage for a stay in a skilled nursing facility is 100 days, the average Medicare patient is only covered for 42 to 48 days. (T, p92) However, the average length of stay for a patient at Petitioner's facility is 270 days. (T, p92) Medicare covers the first 20 days of a patient's stay completely, but after the 21st day, a co-pay of \$100 a day must be paid by the patient, other insurance or Medicaid. (T, pp92, 352) Once the benefit expires, Petitioner looks for alternative pay sources for that patient. (T, p93)

Mr. Richards described Medicaid as a program for the financially indigent where a person must have less than \$2,000 in actual assets to qualify for skilled nursing care. (T, p93) According to Mr. Richards, most people without financial resources tend to qualify for Medicaid. (T, p93) With Medicaid, a patient must pay Petitioner an amount determined by the Family Independence Agency. This amount equals the patient's monthly income minus a \$60 personal allowance. (T, p95) After the patient pay amount is disbursed to Petitioner, Medicaid covers the balance of the costs for that month, up to the maximum daily rate set by the Department of Community Health. (T, pp95-96) Petitioner must comply with this Medicaid payment policy to participate in the program. (T, p97)

Mr. Richards explained that each patient is required to complete a resident contract and financial data sheet upon arrival. (T, p98) Pursuant to the contract, a patient may be involuntarily discharged for medical reasons, the patient's welfare, the welfare of other patients

or employees, or nonpayment. According to Mr. Richards, a patient is discharged for nonpayment if the patient is a private pay patient (not eligible for Medicaid) or if the patient does not remit the patient pay amount as determined by the Family Independent Agency. Moreover, if a patient did not cooperate with Petitioner and failed to apply for Medicaid or provide documentation of their assets, Petitioner would discharge them and start a collection action. (T, pp356-357) However, a patient that does not have the ability to pay will not be discharged. (R1, R3 and T, pp100, 142) According to Mr. Richards, “we’re aggressive in our collection and procedures, but we’re not going to stop delivering care for people that are already with us because we’re not sure if we’re going to get paid.” (T, p186) Mr. Richards also stated that within the last five years, no patient has been discharged for nonpayment. (T, pp142-143)

Additionally, Mr. Richards cited two situations that occurred in 2003 where Petitioner admitted and provided services to an individual with no coverage or ability to pay. (T, pp101-103, 354) The first situation involved a patient that was not a citizen of the United States. Petitioner admitted this patient believing she was covered by Medicare. After learning that she had no medical coverage, Petitioner continued to provide care knowing that it would not be paid for these services. The other situation involved a Wayne County resident who required extensive rehabilitation services. Mr. Richards stated that the process to transfer a Medicaid case from one county to another and to receive payment for the rehabilitation services through prior authorization takes months. According to Mr. Richards, Petitioner did not have time to wait for the transfer and authorization, so it treated this patient and discharged her three months later. Mr. Richards testified that “whether we’ll get paid for that or not is still in question. Some of the paperwork’s been submitted but it’s unlikely we’ll receive any reimbursement under Medicaid for that....” (T, pp102-103)

Mr. Richards stated that any treatment provided to a patient with no source of payment would be written off to "bad debt." (T, p196) Petitioner's bad debt expense also includes uncollectible private pay accounts but does not include the difference in the amount paid by Medicaid and the cost of patient care, known as Medicaid write-off. (R7 and T, p204) According to Mr. Richards, Petitioner occasionally hires a collection agency to pursue the collection of its bad debts. (R7 and T, p202)

Mr. Richards testified that a large percentage of Petitioner's patients are indigent people and that the reimbursement Petitioner receives from them is far below cost of care. (T, p91) Mr. Richards stated that during the years at issue, 74 to 76 percent of Petitioner's patients were covered by Medicare and Medicaid. Specifically, in 2002, 62% were covered by Medicaid and 12% were covered by Medicare. In 2003, 63% were covered by Medicaid and 14% were covered by Medicare. (R6 and P17) (T, pp103-106) In one of the fiscal years in issue, the Medicaid reimbursement was \$23 per patient below Petitioner's actual daily cost. (T, p106)

In response to questions regarding Petitioner's financial position, Mr. Richards testified that the disparity between Petitioner's cost of care and Medicaid reimbursement amounted to a loss of \$743,657 and \$895,999 for fiscal years ending June 30, 2002 and 2003, respectively. (R8 and T, p107) Thus, during 2002 and 2003, Petitioner provided over \$1.6 million of charity, or unreimbursed care. (T, pp109 and 112) Mr. Richards further testified that Petitioner experienced operating losses in 2002 and 2003 of \$339,412 and \$24,804, respectively. (P21-22)

According to Mr. Richards, even though Petitioner experienced these operating losses, it will not limit the number of Medicaid patients it accepts. Mr. Richards acknowledged that, if it did, its losses would be reduced. (T, p117) It is only with the support of St. John Health that Petitioner has been able to remain open. (T, p117) When asked why Petitioner continues to

operate with significant losses instead of reducing the number of Medicaid patients it accepts, Mr. Richards replied that "...it's our mission. That's what we are to do is to provide care for people that are financially indigent and care for people that nobody else will care for." (T, p119)

Moreover,

[i]t doesn't match up with our mission and values of our organization, which is to provide care and services for the people most in need, including the poor, the financially indigent...If I proposed to the board of trustees or the sponsorship, the Sisters of St. Joseph or the Daughters of Charity, that we decertify so that we could care for people with more money, they would not approve that. I'm sure of that fact. It doesn't match the mission and values. (T, p176)

According to Mr. Richards, Petitioner's financial position improved during its 2004 fiscal year. Pursuant to Petitioner's Exhibit 23, Petitioner reported a net income of \$610,295 for the nine months ending March 31, 2004. This change was attributed to cost cutting and the advent of the Medicaid provider tax. (T, pp114-115) Mr. Richards described the provider tax as "...a supplement to the Medicaid program that's helped nursing home providers around the state where we pay a tax per bed to the state and then the state gets that matched by the federal government through an intergovernmental transfer, and then it's returned to the skilled nursing facilities based on their utilization, number of days..." (T, p 115) Mr. Richards explained that the future of the provider tax was uncertain as it was only approved by the Federal government through September 30, 2004. (T, p115)

However, even with the income from the provider tax, Petitioner's daily costs were still not met. Mr. Richards testified that in 2004, the Medicaid rate was \$138 per day. With the additional income from the provider tax, Petitioner's daily income increased to \$150 per day. On the other hand, Petitioner's costs were \$175, resulting in a loss of \$25 per day per Medicaid patient. (T, pp122-123) Mr. Richards testified that, in his personal opinion, Petitioner's unlimited acceptance of Medicaid patients relieves the burdens of government by "allowing

persons [who] don't have financial means to get care and services and prolong their life and sustain or improve their situation." (T, p119)

Mr. Richards described the subject property as containing 78,000 square feet, 15 to 17 percent of which is used for support services, 10 to 12 percent of which is used for administrative and general offices, with the remainder used for patient rooms. (T, pp128-132) Petitioner employs 283 people. (T, p138)

Finally, Mr. Richards explained that Petitioner contracts with St. John Health to provide a number of services, including its therapy department (\$30,000 per month) and laboratory services (\$10,000 per month), which are located within Petitioner's facility but operated by St. John Health. (T, pp146-147) St. John Health bills Petitioner monthly for its physical therapy services. (T, pp147-149) The laboratory services are billed to Medicare and are mostly covered under Part B of Medicare. (T, pp148-149)

2. Betty James: Betty James is a nurse consultant employed by International Forensic Services, Inc., which is "...a consulting firm for nursing and private detective work." (T, p206) Ms. James' clients are profit and nonprofit nursing homes, medical facilities and hospitals. (T, p206) Ms. James testified to having 25 years of experience in health care management and consultation. Ms. James has obtained both a registered nurse license and nursing home administrator's license. (T, p208) Ms. James stated that she is familiar with the Public Health Code and the regulations of health care facilities. (T, pp208-211) The Tribunal qualified Ms. James as an expert in the field of public health. (T, p210)

Ms. James testified that she believes the Public Health Code is relevant to the meaning of public health purpose because it "...promotes and protects the residents in the communities, and it also has regulatories for the health facilities in the State of Michigan." (T, pp212-213)

According to Ms. James, the Public Health Code defines a skilled nursing home as “...either a long-term care facility, a medical care facility, and/or a freestanding nursing facility that provides skilled nursing care to resident patients,” and it can only operate with a license from the Michigan Department of Public Health. (T, p214) Ms. James testified that the state’s nursing home regulations: (1) require that a physician’s order must be provided before a patient will be admitted to a skilled nursing home; and (2) prohibit admission of patients younger than 15; and (3) prohibit admission of mentally ill individuals who would harm or be of danger to the other residents, the employees or visiting family members. (T, p221-222)

Further, Ms. James explains that the difference between a skilled nursing facility and a regular nursing home is that a skilled facility can accept both Medicare and Medicaid patients, whereas a regular nursing home can only accept Medicaid patients. (T, pp220-221)

It is Ms. James’ opinion that a nonprofit licensed skilled nursing facility is used for public health purposes and that Petitioner is used for public health purposes. (T, pp 222-223). Ms. James testified that this opinion is based on the statutory definition of public health purposes and the regulations embodied in the Public Health Code. (T, p225) Finally, Ms. James testified that the surveys she conducts at nursing homes have nothing to do with whether or not these facilities are exempt from property taxes and that she has no knowledge in that regard. (T, p224)

3. Nancy Strehl: Nancy Strehl has been employed as the City of Center Line’s Assessor since 1995 and is certified by the State of Michigan as a level three assessor. (T, p240) Ms. Strehl testified that she also performs assessing functions for the City of Utica.

Ms. Strehl does not consider Petitioner to be a skilled nursing facility because “...there’s not a physician on staff 24/7.” However, Ms. Strehl was unsure whether this is a requirement under Michigan law. (T, pp249-250)

Ms. Strehl was asked to describe the terms of the Consent Judgments entered into by the parties and the manner in which Respondent assessed the subject properties after the tax years covered by the Judgments ended. Ms. Strehl testified that Petitioner's personal property was assessed at 25 percent of true cash value beginning in 1986 and ending in 2002. In 2003, Ms. Strehl increased this assessment ratio to 50 percent of true cash value. (R9-11) (T, pp260, 290) Petitioner's real property was assessed at 25 percent of true cash value beginning in 1986. (R9-11) (T, pp261-263, 266, 290) Ms. Strehl maintained this assessment percentage in spite of the fact that she does not believe the real property is exempt under either MCL 211.7o or MCL 211.7r. (T, p293) In Ms. Strehl's opinion, "[y]ou cannot just increase unless the class of property requires an increase larger - you can't take someone directly to 50 percent from 25 percent unless it's a year following agreement." (T, p283)

3. Michael Breen: Michael Breen is the Vice President of Behavioral Health Services at St. John Health. Prior to his current employment, Mr. Breen was the chief executive officer of Saratoga Hospital, the company that owns Petitioner. (T, p341) Mr. Breen has been employed by St. John Health in various capacities for 31 years. (T, p340)

Mr. Breen was called to testify as a rebuttal witness. Mr. Breen testified that Petitioner was classified as a for-profit organization, but converted to a 501(c)(3) organization upon its acquisition by Saratoga Nursing Center in the mid-1980s. (T, p343) Mr. Breen also testified that Saratoga Nursing Center and Petitioner are the same entity and that when the new 501(c)(3) corporation was formed, the named was changed to Saratoga Nursing Center d/b/a Father Murray Nursing Center. (T, p343) When asked to respond to Mr. Tranchida's testimony set forth below regarding Mr. Tranchida's characterization of Petitioner's community services as being only promotional, Mr. Breen stated:

...anything we did at Father Murray, and frankly, anything we did at Saratoga...we did for the community outreach value because there was so much need in the neighborhood...we decided that we...should be committed toward educating and helping screen the community. Father Murray did the same things. Would I deny that there's promotional value to that? That might be one of the side effects of it, which is a good side effect, but that's not why we would be doing most of that stuff. (T, pp348-349)

PETITIONER'S ARGUMENT

I. Public Health Exemption Under MCL 211.7r.

MCL 211.7r states, in pertinent part, that “[t]he real estate with buildings and other property located on the real estate on that acreage, owned and occupied by a nonprofit trust and used for hospital or public health purposes is exempt from taxation under this act.” Petitioner asserts that to qualify for an exemption under MCL 211.7r, the following test must be met:

- (1) Petitioner must be a nonprofit trust;
- (2) Petitioner must own and occupy the real property; and
- (3) Petitioner must use the property for hospital or “public health purposes.”
(Petitioner’s Proposed Findings of Fact and Conclusions of Law, p10)

Pursuant to *Oakwood Hospital Corp v State Tax Comm’n*, 385 Mich 704; 190 NW2d 105 (1971), the term “nonprofit trust” includes a nonprofit corporation. *Id.* at 708. Petitioner argues that it is undisputed that Petitioner is a Michigan nonprofit corporation. As such, Petitioner has met the first prong of the test. Petitioner also argues that it is also undisputed that it owns and occupies the subject property and, as such, the second prong of the test has been met. The only issue, then, is whether Petitioner uses the subject property for public health purposes.

Because the term “public health purposes” is not defined in the General Property Tax Act (“GPTA”), Petitioner cites *Rose Hill Center, Inc v Holly Twp*; 224 Mich App 28; 568 NW2d 332 (1997), which defined “public health” as:

The art and science of protecting and improving community health by means of preventive medicine, health education, communicable disease control, and the application of the social and sanitary sciences. (quoting *The American Heritage Dictionary: Second College Edition*). *Id.* at 33.

In *Rose Hill*, the petitioner was a residential psychiatric treatment center. In that case, the Court held that the petitioner's patient care services constituted "public health purposes." *Id.* at 33. Petitioner argues that, similar to the facility in *Rose Hill*, it "provides twenty-four hour seven days a week skilled nursing care to its patients, is open to members of the general public without [restriction]..., and accepts patients covered by Medicare and Medicaid." (Petitioner's Pre-Trial Brief, p9) Hence, under the principle of *stare decisis*, Petitioner argues that the Tribunal should find that it is operated for "public health purposes." (Petitioner's Proposed Findings of Fact and Conclusions of Law, p12)

Petitioner also argues that in *Brookcrest Nursing Home, Inc v Grandville*, 5 MTT 1 (1986), the Tribunal held that "[i]t is logical to infer the legislature intended public health purposes to include entities that it licenses as public health facilities." Therefore, the only question left is whether a facility is used for public, rather than private health purposes. (Petitioner's Proposed Findings of Fact and Conclusions of Law, pp13-14) (Emphasis omitted.)

To that end, Petitioner asserts that Michigan Courts have held that licensed skilled nursing facilities are entitled to the public health exemption. (See *Brookcrest, supra*, and *Henry Ford Continuing Care Corp v Roseville*, MTT Docket No. 142360 (1993)). (Petitioner's Pre-Trial Brief, pp10, 12) Petitioner further asserts that its operations are for public health purposes because it admits patients on a first-come, first-served basis without regard to race, religion, color, national origin, sex, age, handicap status, marital status, sexual preference, source of payment or inability to pay. (Petitioner's Proposed Findings of Fact and Conclusions of Law, p11)

Moreover, Petitioner argues that it provides a number of health services to the community in general. (Petitioner's Proposed Findings of Fact and Conclusions of Law, p17) Petitioner

references its influenza and pneumococcal immunization programs, designed to prevent the spread of disease and outbreaks, which is offered to its staff members, patients and their families, visitors, vendors and visiting church groups. It also provides community health education programs through student clinical training, educating patients, their families and the public about Medicare and Medicaid programs, and taking part in clinical tests for influenza prevention research. Petitioner employs “three full time professionals solely devoted to infectious disease control and health education...” (Petitioner’s Proposed Findings of Fact and Conclusions of Law, p13) Finally, Petitioner states that it works with the Macomb County Mental Health Program by accepting referral patients who suffer from certain mental problems and need continuous assessment by the health department.

II. Charitable Use Exemption under MCL 211.7o and 211.9(a).

MCL 211.7o states, in pertinent part, that “[r]eal or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.” MCL 211.9 states, in pertinent part, that “[t]he following personal property is exempt from taxation: (a) The personal property of charitable, educational, and scientific institutions incorporated under the laws of this state.” Petitioner asserts that, to qualify for a property tax exemption pursuant to MCL 211.7o and MCL 211.9(a), it must prove that:

- (1) Petitioner owns and occupies the real estate;
- (2) Petitioner is a charitable institution; and
- (3) The real and personal property are used by Petitioner solely for the purposes for which it was incorporated. (Petitioner’s Proposed Findings of Fact and Conclusions of Law, p17)

Petitioner states it is undisputed that it owns and occupies the subject property and that it uses the property solely for the purposes for which it was incorporated. Therefore, the only issue

before the Tribunal is whether Petitioner is a charitable institution. (Petitioner's Proposed Findings of Fact and Conclusions of Law, p17) In support of its assertion that it is a charitable organization, Petitioner refers to the definition of "charity" found in *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982):

Charity ... [is] a gift, ...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, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." (Emphasis added by Petitioner is omitted.)

Petitioner argues that it serves the general public without restriction and irrespective of source of payment, and that its "services relieve bodies from disease, suffering or constraint" by treating an array of medical conditions. (Petitioner's Proposed Findings of Fact and Conclusions of Law, pp18-19) Petitioner also claims it offers a charity care program to the indigent, including uninsured and Medicaid patients, which is a significant part of its operations and core mission. (Petitioner's Proposed Findings of Fact and Conclusions of Law, pp19, 23) Petitioner argues that it accepts "...all patients requiring skilled nursing care, regardless of ability to pay and continues to provide services despite that this policy results in significant financial losses." (Petitioner's Proposed Findings of Fact and Conclusions of Law, p19) Petitioner also asserts that its policy of admitting a patient first and then verifying payment source later illustrates its charitable nature. In support of this assertion, Petitioner cites *Guardiola v Oakwood Hospital*, 200 Mich App 524; 504 NW2d 701 (1993), wherein the Court stated that "[a] profit making entity will generally not extend credit unless it believes it will be paid, while a provider that serves first and asks questions later is more likely to be 'charitable' in intent." *Id.* at 536. Moreover, the fact that Petitioner charges a fee for its service does not negate its classification as

“charitable.” In *Gundry v RB Smith Memorial Hospital Ass’n*, 293 Mich 36; 291 NW 213 (1940), the Michigan Supreme Court held that the petitioner was exempt from property tax where it charged patients for services, did not collect from indigents, did not refuse admission due to inability to pay, and had positive income. (Petitioner’s Proposed Findings of Fact and Conclusions of Law, pp19-20)

Petitioner also argues that the difference between its costs and the Medicaid reimbursements it receives is a gift to the Medicaid patients. Petitioner claims that under the holdings in *Huron Residential Services For Youth Inc v Pittsfield Charter Township*, 152 Mich App 54; 393 NW2d 568 (1986), and *Redford Opportunity House v Township of Redford*, unpublished opinion per curiam of the Court of Appeals, decided January 24, 2004 (Docket No. 241718), “...the petitioners provided a gift for the benefit of the residents because the state, not the residents, paid for the services rendered, therefore, there can be no question there is a gift where the Medicaid reimbursement is below Father Murray’s costs of providing such care.” (Petitioner’s Proposed Findings of Fact and Conclusions of Law, p21) (Emphasis omitted.)

Petitioner asserts that in 2002 and 2003, it provided “care for the poor” (referencing the Medicaid disparity) amounting to over \$740,000 and \$895,000, respectively. (Petitioner’s Reply Brief, p4)

In further support, Petitioner cites *Marycrest Manor v City of Livonia, et al*, 6 MTT 313 (1989), as a case in which the relevant facts are indistinguishable from the instant case. In *Marycrest*, the Tribunal held that the petitioner provided a gift to the general public and granted the petitioner an exemption under MCL 211.7o. The Tribunal further held that the fact that some of the residents received Medicaid did not negate Marycrest’s charitable activities. (Petitioner’s Proposed Findings of Fact and Conclusions of Law, p21) Petitioner reiterated the fact that its

continued and unlimited acceptance of Medicaid patients has resulted in unreimbursed care of over \$1.6 million during 2002 and 2003 and financial losses exceeding \$1 million for the 2001 through 2003 fiscal years. (R5 and P20-22) (Petitioner's Proposed Findings of Fact and Conclusions of Law, p22) Petitioner asserts that this loss represents a gift to the general public and that, like the petitioner in *Marycrest*, it should receive an exemption under MCL 211.7o.

Finally, Petitioner asserts that by "providing patient care to the sick and infirm and by accepting Medicaid and Medicare patients, as well as uninsured charity care patients, Petitioner relieves the government's burden of having to provide this nursing care for the poor and elderly." (Petitioner's Proposed Findings of Fact and Conclusions of Law, p23) Petitioner cites the testimony of Ms. James, wherein she "...testified that nursing care for the elderly and the poor was a burden borne by County governments for most of the last century." (Petitioner's Proposed Findings of Fact and Conclusions of Law, p23) Petitioner also points to the Medicare and Medicaid programs as establishing a burden of government to care for the "medically indigent."

III. Respondent's Reply to Petitioner's Case.

Respondent argues that Petitioner's reliance on *Rose Hill* is unfounded due to the fact that, in that case, the petitioner operated a facility for mentally ill adults. Similarly, the petitioner in *Redford Opportunity House* operated a facility for developmentally disabled adults. Neither case addressed skilled nursing facilities. Additionally, Respondent argues "...that the rule established in *Marycrest Manor*...has not been followed by this Tribunal, and therefore, is of no precedential value." (Respondent's Reply Brief, p1)

In response to Petitioner's claim of providing health services to the community, Respondent argues that:

...it is clear that the Petitioner does not provide any significant charitable services to the "community at large," and further if this Tribunal were to rule that this

short fall in the Medicaid/Medicare reimbursement was somehow to be construed as lessening the burden on the government, then clearly, every conceivable institution which accepts Medicaid/Medicare as payment for services rendered would be entitled to an exemption under the Michigan Property Tax Act. (Respondent's Reply Brief, pp1-2)

Respondent also argues that “[i]t might be noted that the Petitioner voluntarily became certified to accept Medicaid/Medicare patients. There is nothing barring [Petitioner] from decertifying from these programs and only accepting private pay patients or other patients who are not otherwise Medicaid/Medicare eligible.” (Respondent's Reply Brief, p2)

Finally, Respondent argues that removing Petitioner from the property tax roll would increase the tax burden of other residents of the City of Center Line. “The Petitioner would still be utilizing the roads, sidewalks, fire and police services to the extent everyone else in the City utilizes these services, but would be paying nothing toward the benefits they receive for these services.” (Respondent's Reply Brief, p2) Respondent does not believe that this is what the Legislature intended.

RESPONDENT'S CASE

Respondent argues that Petitioner is not a charitable institution as contemplated by MCL 211.7o and MCL 211.9(a) and that the subject property is not used for public health purposes pursuant to MCL 211.7r.

RESPONDENT'S EXHIBITS

- *Exhibit 1:* The Pre-admission Intake, Admissions policy, Financial Data Sheet, and Resident Bill of Rights sections of Petitioner's Policy and Procedure Manual.
- *Exhibit 2:* The “bed hold policy” section of Petitioner's Policy and Procedure.
- *Exhibit 3:* A document titled “Guidelines in the Preparation of a Notice of Involuntary Transfer or Discharge.”

- *Exhibit 4:* Petitioner's Resident Contract and pharmacy residence admission form.
- *Exhibit 5:* Petitioner's 2000, 2001 and 2002 Income Tax Return, Form 990.
- *Exhibit 6:* Petitioner's Income Statements for 2001-2004 and Financial Parameters for Month Ending June 30, 2003.
- *Exhibit 7:* Petitioner's Comparative Balance Sheet for 2002 and 2003, and Income Statement Detail by Account for Period Ending May 31, 2003.
- *Exhibit 8:* St. John Health System – Father Murray Nursing Center Care of Poor, July 2001 through June 2002 and July 2002 through June 2003.
- *Exhibit 9:* The subject property's 2002 Assessment Information.
- *Exhibit 10:* The subject property's 2003 Assessment Information.
- *Exhibit 11:* The subject property's 2004 Assessment Information.

RESPONDENT'S WITNESSES

Respondent's only witness was Peter Tranchida. Mr. Tranchida is an attorney licensed in the state of Michigan. Mr. Tranchida began serving on Saratoga Nursing Home's Board of Directors sometime between 1982 and 1985 and served as Chairman of the Board for many years. (T, pp294-295) Mr. Tranchida resigned from the Board in the summer of 2002. (T, p296) Therefore, Mr. Tranchida has limited experience on the Board during the tax years at issue. Mr. Tranchida testified that he served on the board without compensation or special benefits. (T, p323)

When questioned about the charitable care offered by Saratoga, Mr. Tranchida testified that the board sometimes discussed offering care on a charitable basis to the community as a promotional issue. (T, p301) According to Mr. Tranchida, the charitable care idea was to attract people to its nursing home by "efforts to introduce ourself to the public through some vehicles

such as, perhaps, blood pressure tests or something of this nature but never services in and of themselves.” (T, p301) Mr. Tranchida stated that the purpose of promoting their services was to keep their beds filled by paying patients since “you are in competition with other facilities that offer the same types of services.” (T, pp302-304)

When questioned regarding the Consent Judgments (Petitioner’s Exhibits 25 and 26), Mr. Tranchida testified that they were the result of a settlement compromise between Saratoga Nursing Center and the City’s taxing authority. (T, pp307-309) According to Mr. Tranchida, the compromise of a 25 percent assessment was in recognition of the services rendered by the community to the facility, such as police, fire and water, and that the reduction in the assessment percentage continued to be a “self-renewing” policy. (T, p309)

RESPONDENT’S ARGUMENT

I. Public Health Exemption Under MCL 211.7r.

Respondent argues that the applicable focus for determining whether Petitioner qualifies for an exemption under MCL 211.7r is set forth in *Healthlink Medical Transportation Services, Inc v City of Taylor*, (Docket No. 275821, July 1, 2003). (Respondent’s Trial Brief, p7) In that case, the Tribunal quoted the definition of public health adopted by the Michigan Court of Appeals in *Rose Hill*, and stated: “Central to the definition of public health is a focus on the community at large, the public, rather than toward individual patients.” (*Id.*) According to Respondent, “[t]his principal has been adopted in a number of other cases, in particular *Priority Health Care, Inc v City of Grand Rapids*, MTT Docket No. 256280; *Wexford Medical Group v City of Cadillac*, MTT Docket No. 276304; *McLaren Regional Medical Center v City of Owosso*, MTT Docket No. 268590; *Detroit Medical Center v City of Detroit*, MTT Docket No. 272421. As all of these cases indicate, central to the definition of public health is the focus on

community at large, the public, rather than toward individual patients.” (Respondent’s Trial Brief, pp3-4)

As for Petitioner, Respondent argues that:

... the focus of Petitioner’s efforts are on its patients that are admitted to its facility, where little effort is made as previously stated to promoting or improving the community health outside of the facility. Granted that the Petitioner does endeavor in an occasional program which may be construed as helping the community at large. Again, this is such an insignificant part of their total operation that it bears little weight. (Respondent’s Post Hearing Brief, p17)

Respondent asserts that Petitioner’s health programs “...appear to be nothing more and nothing less than health promoting programs to garner patients into their facility as beds become available...this is nothing more than common place business activities which do not rise to the level of promoting the public health to the community at large.” (Respondent’s Post-Hearing Brief, p 17)

Finally, Respondent argues that in *McLaren Regional*, the Tribunal narrowly defined what constitutes public health purposes. If this were not the case, “...every nonprofit organization offering health related services would qualify for a public health exemption,” and that is not what the legislature intended. (Respondent’s Post-Hearing Brief, p13, quoting *McLaren Regional*)

II. Charitable Use Exemption Under MCL 211.7o and 211.9(a).

Respondent cites *Detroit Medical, supra*, for the test which an institution must meet to qualify for a charitable exemption under MCL 211.7o. (Respondent’s Trial Brief, p1) Under *Detroit Medical*, an institution must meet the following requirements:

- (1) The real or personal property 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 claimant occupies the real or personal property solely for the purposes for which it was incorporated.

Respondent had no comment with regard to the first and third requirements and focused its arguments entirely on the second issue. (Respondent's Trial Brief, p1)

Like Petitioner, Respondent relies upon the definition of "charity" from *Retirement Homes*. Respondent then turns to the Tribunal's decision in *Detroit Medical Center* wherein the Tribunal stated that "[t]he proper focus for determining whether an organization is a charitable organization entitled to an exemption for property tax purposes is 'whether [the organization's] activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.'" *Detroit Medical Center* citing *Michigan United Conservation Clubs v Lansing Township*, 129 Mich App 1, 14; 342 NW2d 290 (1983) (hereafter "MUCC").

In *Detroit Medical Center*, the Tribunal stated that "[t]he focus of 'public health' is on the community's health." Therefore, Petitioner argues that "[t]he central focus of whether to grant an exemption under the Public Health Exemption is the community at large. It is similar to what a local health department would endeavor to do as an arm of the public health department." (Respondent's Post Hearing Brief, p17)

According to Respondent, "[t]he facts in this case currently show that the Petitioner has made, at best, a minute effort to benefit the general public or benefit an indefinite number of persons." (Respondent's Post Hearing Brief, p14) Respondent argues that its Exhibits 6 and 8 show no accounting for charitable care because Petitioner has "...made such an insignificant effort for its charitable care that it does not render any financial reporting on their financial statements." (Respondent's Post Hearing Brief, pp 14-15) Further, Respondent asserts the following:

Mr. Richards testified that approximately \$100,000.00 of their costs is directly attributed to their charitable programs. If you divide their total revenues of fourteen million dollars by the one hundred thousand dollar direct costs as a percentage of their total revenues, this percentage works out to .0071, that is 7/10 of 1% of their total revenues taken as a whole which Petitioner claims is sufficient for this Tribunal to grant them an exemption under the Charitable Purpose Exemption. (Respondent's Post Hearing Brief, p15)

According to Respondent, "Petitioner has shown that its charitable efforts are nothing more than an incidental part of its operations, and in reality, they are self-promoting programs to coax potential patients into its facilities to keep its bed count at a maximum." (Respondent's Post Hearing Brief, p15) In support of this position, Respondent cites the testimony of Mr. Richards wherein Mr. Richards stated that of 283 people employed by Petitioner, there are three people responsible for Petitioner's charitable care efforts. Moreover, the direct cost for their services is approximately \$170,000, but only \$100,000 is directly attributed to charitable programs. (Respondent's Post Hearing Brief, p1) Respondent argues that under *McLaren Regional and ProMed Healthcare v City of Owosso*, 249 Mich App 490; 644 NW2d 47 (2002), this is simply not enough for Petitioner to qualify for the exemption.

Respondent further asserts that the fact Petitioner requires patients to sign an admissions contract negates the presence of a gift. In support of this assertion, Respondent cites *Holland Home v City of Grand Rapids*, 219 Mich App 384; 557 NW2d 118 (1996). "In *Holland Homes*, there was a contract similar to the Admissions Contract and Resident's Bill of Rights in this case." (Respondent's Post Hearing Brief, p16). According to Respondent, the *Holland Homes* Court "...held that a 'contract' was not a 'gift,' and therefore the petitioner was not entitled to an exemption for property taxes." (Respondent's Post Hearing Brief, p6). Moreover, Respondent argues that Petitioner's contract "...compels the patient to make [an] effort to access certain

government programs to ensure that the Petitioner receives payment for their services rendered to the patient.” (Respondent’s Post Hearing Brief, p16)

Finally, in addressing the fact that Petitioner suffered financial losses in 2002 and 2003, Respondent again turns to *Retirement Home*.

In *Retirement Home*, the Court clearly indicated that by the mere fact that you do not make a profit when you charge a monthly fee does not entitle you to an exemption since there is no gift for the benefit of an indefinite number of persons, or for the benefit of the general public without restriction. The Court held that under the law, the exemption could not be granted to the Petitioner. In this case, there is a monthly fee which is the insurance, Medicaid, Medicare or private pay fee which Petitioner receives on a monthly basis. The facts fail to show and Petitioner failed to show that the residents of the nursing home received any significant benefit that they did not pay for. (Respondent’s Post Hearing Brief, p16)

III. Petitioner’s Reply to Respondent’s Case.

Petitioner’s Reply to Respondent’s Post Hearing Brief addresses three issues: first, statements from the hearing record that Respondent misconstrues or misquotes; second, Respondent’s misplaced reliance on Tribunal cases dealing with the public health tax exemptions; and third, Respondent’s misplaced reliance on *ProMed*, *McLaren* and other cases dealing with the charitable tax exemption and independent living apartments.

As for the Tribunal’s record, Respondent quotes Mr. Richards as stating “[t]hat there are only three people who are responsible for their charitable care efforts out of 283 people who are employed with the Petitioner.” (Respondent’s Post Hearing Brief, p1) Petitioner asserts that “Respondent is confused. Nowhere in the record did Mr. Richards make that statement, nor does the record support that conclusion.” (Petitioner’s Reply Brief, p2) Petitioner argues that “...the record also is clear that essentially all 283 employees are involved in carrying out Father Murray’s charitable health care activities.” (Petitioner’s Reply Brief, p3)

As for Petitioner's depreciation expense, "Respondent suggests that if '...this expense was deducted from total operating expenses for each of the years in question, [Father Murray] would not have any shortfall in its unpaid cost of public programs. (R Brief 1)" (Petitioner's Reply Brief, p3) Petitioner argues that "Respondent misconstrues Mr. Richards' testimony and is confused about financial accounting principles." (Petitioner's Reply Brief, p3)

Respondent stated "[t]hat Mr. Richards testified that there was no care for the poor reported for the years in question as set forth in Respondent's Exhibits 8 and 6." Petitioner argues that Respondent's statement is not correct and that "Mr. Richards testified at great length that Father Murray consistently has a patient population that is comprised of 62-65% Medicaid eligible individuals for whom Father Murray is reimbursed at rates significantly below its costs of providing services. (T, p105, 111-115, and 123-124)" (Petitioner's Reply Brief, p4) Petitioner also argues that to be eligible for Medicaid, a person must be financially indigent. Respondent's Exhibit 8 shows that Petitioner "...provided over \$740,000 of 'care for the poor' in FYE 2002 and over \$895,000 in FYE 2003." (Petitioner's Reply Brief, p4)

Next, Petitioner addresses Respondent's "...claim that Father Murray 'will discharge somebody for nonpayment.' (R Brief 1)." (Petitioner's Reply Brief, p4) Petitioner argues that "Respondent blatantly misstates the Tribunal record...Mr. Richards said...that while Father Murray can involuntarily discharge a patient for nonpayment under state law, **Father Murray has not and will not discharge a patient for nonpayment.** (Tr 142-144, 185-186)" (Emphasis in original) (Petitioner's Reply Brief, p4) "Moreover, Father Murray will only pursue collection of bad debts from those patients who have the ability to pay but refuse to do so, and even in those cases, Mr. Richards clearly said Father Murray will not discharge the patient." (Petitioner's Reply Brief, pp4-5)

Next, Petitioner takes issue with Respondent's characterization of Mr. Tranchida's testimony. "Respondent suggests Mr. Tranchida's testimony establishes that Father Murray's offering of charitable care was for promotional purposes only. (R Brief 2)." (Petitioner's Reply Brief, p5) Petitioner argues that:

It would seem that the only promotional benefit of providing care to indigent patients (and publicizing such services to the general public) is that the facility becomes a beacon for others who cannot pay and are not accepted elsewhere. This is hardly a recipe for success if an organization's only motivation is to make a profit. Nor is trying to keep its beds filled inconsistent with Father Murray's charitable purposes, where the majority of the patients in those beds are indigent and Father Murray is subsidizing the costs of such care. (Petitioner's Reply Brief, p5)

Finally, Petitioner addressed Mr. Tranchida's testimony regarding the earlier Consent Judgments. Petitioner argued that "[w]hile the settlement may have been aimed at approximating the value of city services provided to Father Murray, the use of municipal services is irrelevant to exemption. Churches and non-profit hospitals, for example, use municipal services and still remain tax exempt." (Petitioner's Reply Brief, p7)

Turning to Respondent's reliance on recent Tax Tribunal decisions, Petitioner argues that "[e]ach of these cases is factually distinguishable from the instant case, and, therefore, not controlling. None of these cases involve skilled nursing facilities." (Petitioner's Reply Brief, p7) Instead, these cases involve health clinics, physicians' offices, ambulance services, health maintenance organizations and free-standing laboratory draw and weight management facilities. (Petitioner's Reply Brief, pp7-8)

Moreover, Petitioner argues that:

In all of its enthusiasm to analogize this case with other recent Tribunal cases where the public health exemption was denied, Respondent loses sight of the critical fact that *Rose Hill* is the prevailing law on the matter. In *Rose Hill*, the Michigan Court of Appeals upheld the public health exemption for a mental health treatment center that provided care to the sick or infirm on a 24-hour basis

and which did not discriminate as to race, religion, sex or source of payment. Based on these facts, the Court of Appeals concluded *Rose Hill* was operated for “public health purposes” within the common usage (dictionary definition) of the term and the meaning of MCL 211.7r. *Rose Hill, supra* at 33. Regardless of how the Tax Tribunal has decided cases involving facilities that do not provide 24-hour care, *Rose Hill* remains the prevailing law. MCR 7.215(c). (Petitioner’s Reply Brief, p9)

Not only does Respondent ignore the holding and rationale in *Rose Hill*, it also fails to note the critical point that the Tribunal decision upheld by the Court of Appeals in that case expressly cited the *Brookcrest* and *Henry Ford Continuing Care* cases with approval. In those cases, the Tribunal had held that **licensed skilled nursing facilities are entitled to the public health exemption**. Moreover, in *Brookcrest*, the Tribunal said “[i]t is logical to infer the legislature intended public health purposes to include entities that it licenses as public health facilities.” (Emphasis added.) *Brookcrest, supra* at 11. (Petitioner’s Reply Brief, pp10-11)

As for Respondent’s suggestion that the public health tax exemption would apply to such agencies as the public health department, Petitioner argues that this premise is fatally flawed. Pursuant to MCL 211.7r, the public health exemption is limited to property owned by nonprofit trusts or nonprofit corporations. Public health departments are not organized as nonprofit trusts, or nonprofit corporations, and therefore would not qualify for the exemption. (Petitioner’s Reply Brief, pp11-12)

Finally, Petitioner does not disagree with Respondent’s reliance on *ProMed* and *McLaren* for the proposition that, to qualify for a charitable exemption, an institution’s charitable care must be more than an incidental part of the institution’s operations. However, Petitioner argues that unlike the facts in those cases, “...the record is clear in the instant case that Father Murray did provide a significant amount of charitable care.” (Petitioner’s Reply Brief, p13)

Moreover, Petitioner asserts that it meets the *Retirement Homes* test of providing a gift for the general public without restriction or for the benefit of an indefinite number of persons by providing “...skilled nursing care to members of the general public (relieving their bodies from

disease and suffering) without regard to race, color, national origin, religion, marital status, sexual preference, handicap, or age and regardless of source of payment or ability to pay.”

(Petitioner’s Reply Brief, p14) Having said that, Petitioner argues that it is different from the petitioners in *Retirement Homes* and *Holland Home* because the institutions in those cases were unlicensed, independent living apartments and not skilled nursing facilities. Additionally, the residents in those cases were “...chosen on the basis of their good health, their ability to pay the monthly charge, and generally, their ability to live independently.” *Retirement Homes* at 350. Petitioner points out that, in *Retirement Homes*, the subject property contained a nursing home and a home for the aged, in addition to the independent living apartments. The nursing home and the home for the aged were exempt from property taxes and had been since 1905.

Retirement Homes at 343.

In response to Respondent’s comments regarding Petitioner’s admission contract, Petitioner argues that, unlike the petitioner in *Holland Homes*, it is not contractually obligated to provide patient care. Moreover, Petitioner admits patients without verifying source of payment and provides care without “economic restriction” or contractual obligation to do so. (Petitioner’s Post Hearing Brief, p16)

FINDINGS OF FACT

The Tribunal requested that the parties file proposed findings of fact. After considering these proposals, the witness testimony and each party’s evidence and briefs, the Tribunal makes the following findings of facts:

1. Petitioner is a Michigan nonprofit corporation organized on a non-stock, membership basis. Petitioner is incorporated as Saratoga Nursing Center operating under the assumed name of Father Murray Nursing Home. Petitioner has been incorporated under the name Saratoga Nursing Center since April 23, 1985.

2. In pertinent part, Petitioner's Amended and Restated Articles of Incorporation provide that Petitioner's purposes are:
 - A. To acquire, establish, construct, develop, operate and maintain long term care, homes for the aged and other similar facilities, and to initiate, sponsor and carry out programs for the care, treatment and habitation of the sick, infirm and aged.
 - B. To provide, on a nonprofit basis, nursing home facilities and services for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care where no adequate housing exists for such groups...to provide elderly persons and handicapped persons with housing facilities and services specially designed to meet their physical, medical and psychological needs, and to promote their health, serenity, happiness and usefulness in longer living....
 - D. To promote and to carry on scientific research with respect to the cause, treatment and prevention of illness and injury and the improvement of public health.
 - E. To participate in and to carry on activities for the education of physicians, nurses, other professional and paraprofessional personnel, and the public about rendering care to the sick, injured and disabled, about prevention of illness and injury, and about the promotion of health. (P8)
3. Petitioner is classified as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. (P7) Petitioner's Amended and Restated Articles of Incorporation provide that Petitioner may only exercise such powers as authorized by Section 501 (c)(3) of the Internal Revenue Code. (P8)
4. Article V of Petitioner's Amended and Restated Articles of Incorporation provides that Petitioner "...shall be operated exclusively for charitable, scientific and educational purposes as a nonprofit corporation." Moreover, Article V provides that none of Petitioner's trustees shall have title to or interest in Petitioner's property or earnings, and no part of Petitioner's net earnings shall benefit a private individual. If the corporation is dissolved, all of the assets that remain after payment of all liabilities shall be transferred to St. John Health System or to another organization exempt under Section 501 (c)(3). (P8)
5. Article II of Petitioner's Amended and Restated Articles of Incorporation provides that Petitioner's philosophy is that articulated and promoted through "...the Ethical and Religious Directives for Catholic Health Care Services as approved and promulgated, from time to time, by the National Conference of Catholic Bishops. (P8) These Directives provide, in pertinent part:

- a. The biblical mandate to care for the poor "...prompts us to work to ensure that our country's health care delivery system provides adequate health care for the poor...particular attention should be given to the health care needs of the poor, the uninsured, and the underinsured."
 - b. "In accord with its mission, Catholic health care should distinguish itself by service to and advocacy for those people whose social condition puts them at the margins of our society and makes them particularly vulnerable to discrimination: the poor, the uninsured and the underinsured...the elderly; those with incurable diseases...."
 - c. The Directives must be adopted as policy by Catholic health care providers. (P12)
6. Petitioner's sole member is St. John Health Corporation, a/k/a St. John Health System, also a Michigan nonprofit corporation, exempt from federal income tax under 501(c)(3). (P9-10). Further, St. John Health's sole member is Ascension Health, a Missouri nonprofit corporation, exempt from federal income tax under 501(c)(3). (P11) The mission of these two organizations is to provide health care services to the poor and underserved. (P11)
 7. Petitioner owns the subject property, located at 8444 Engleman, Center Line, Michigan 48015. (P1)
 8. The tax years at issue are 2002, 2003 and 2004.
 9. The subject property's parcel numbers are 50-13-22-376-023 (real) and 50-13-00-000-016 (personal). (P18)
 10. The subject property consists of a skilled nursing facility, parking area, medical equipment and furnishings situated within the building. (R9-11)
 11. During all times pertinent to this appeal, Petitioner occupied the subject property. Moreover, Petitioner occupied the subject property solely for the purposes for which it was incorporated.
 12. Petitioner operates a 24 hours a day, seven days a week, 231-bed skilled nursing facility with 63 percent, 62 percent and 64.8 percent of the facility occupied by Medicaid patients during 2002, 2003 and 2004, respectively, and the remainder occupied by Medicare, private pay or other insured patients. Further, Petitioner does not limit the number of Medicaid patients; Petitioner voluntarily had its 231 beds certified and licensed for Medicare and Medicaid. (P3-6, P17)

13. As of each relevant tax day, Petitioner was licensed and regulated by the Michigan Department of Community Health under Part 217 of the Michigan Public Health Code, being MCL 333.21701 *et seq.*
14. The difference between Petitioner's average cost of care and Medicaid reimbursements amounted to \$743,657 and \$895,999 in 2002 and 2003, respectively, for a total of over \$1.6 million of unreimbursed care to Medicaid patients. (R8 – identified as “Medicaid losses”)
15. In 2003, Petitioner admitted and provided services to two individuals with no insurance or Medicaid coverage or ability to pay. (T, p101-103)
16. Treatment provided to a patient with no source of payment is written off to Petitioner's bad debt expense. (T, p196)
17. Petitioner pursues collection of its bad debts. (T, pp196, 204)
18. Patients are admitted to Petitioner's facility without regard to race, color, national origin, religion, marital status, sexual preference, handicap or age. Further, patients are only admitted upon the recommendation and referral of physicians licensed to practice in Michigan. (P14) Petitioner admits patients on a first-come, first-served basis and verifies payment source after admission. (T, p71-72)
19. Petitioner will not accept patients 15 years old or younger, those with active tuberculosis, or with a mental condition that could create a disturbance to others or physically harm others. Moreover, Petitioner cannot admit patients with some types of medical conditions, such as closed head injuries. (P14 and T, pp67-68)
20. Petitioner reserves the right to involuntarily transfer or discharge a patient for medical reasons, the patient's welfare, the welfare of other patients or employees, or nonpayment. (R3) If a patient does not cooperate with Petitioner and fails to apply for Medicaid or provide documentation as to their assets, Petitioner reserves the right to terminate them and start a collection action. (T, pp356-357 Petitioner has not discharged a patient for nonpayment within the last five years. (T, pp141-142)
21. Petitioner employs 238 people. One such employee is the director of continuum of care who is responsible for visiting independent and assisted living facilities to educate them about Medicare and Medicaid services. Additionally, the director works directly at hospitals to educate social workers, discharge planners, prospective residents and family members about Medicaid and Medicare, as well as Petitioner's services. (T, pp82, 86) Petitioner also employs a coordinator of education services who focuses on educating staff, residents and families on health education, and a full-time registered nurse who devotes her time to the infection control program dedicated mainly to inpatients. (T, pp60, 81, 174)

Together, these full-time employees work 2,080 hours per year which costs Petitioner approximately \$170,000 per year. (T, pp87, 138, 163-166)

22. Petitioner offers influenza and pneumococcal immunization programs to its residents, its staff and the community. Petitioner advertises these programs in schools, at St. Clement's church, and on a communication board in its main lobby. Further, Petitioner charges a small fee for residents and families, but that charge is usually reimbursed through Medicare Part B. (T, pp61-63)
23. Petitioner participated with the University of Michigan's influenza study to measure the effectiveness of a new drug called Tamiflu during 2001, 2002 and part of 2003. (T, pp 64, 84-85)
24. Petitioner has the following departments within its facility: laboratory services; nutritional services; physical, occupational and speech therapy; social services department; heart related coronary services; dental care; eye care; psychiatry services; and pharmaceutical services. (T, pp46-51)
25. Petitioner advertises periodically in the Macomb Daily and other newspapers and also passes out brochures to community hospitals, independent and assisted living areas, and at health fairs. (T, pp64-65, 89) Moreover, Petitioner is part of CareLink, St. John Health's senior membership program, where about 90,000 seniors have signed up to receive a monthly newsletter free of charge. (T, pp64-65)
26. For the 2002 and 2003 tax years, Petitioner's losses were subsidized by St. John Health. (T, p117)
27. The references in Respondent's Exhibits regarding "care for the poor," i.e. Exhibit 8, apply to the St. John Health System in general and not to Petitioner.

CONCLUSIONS OF LAW

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

[I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and **an alleged grant of exemption will be strictly construed** and cannot be made out by inference or implication but **must be beyond reasonable doubt**. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. (Emphasis added.) *Michigan Bell Telephone Company v Department of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, Taxation (4th ed.), §672, p. 1403.

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax. *Id.* at 207.

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

...the **beyond a reasonable doubt** standard applies only when a petitioner before the Tax Tribunal attempts to establish a class of exemptions; the **preponderance of the evidence** standard applies to a petitioner's attempts to establish membership in an already exempt class. (Emphasis added.) *Id.* at 494, 495.

Charitable institutions and facilities used for public health purposes have been recognized as exempt classes; Petitioner claims it is a member of either, or both, of these classes. Because Petitioner is attempting to establish membership in either, or both, of these classes, the preponderance of evidence standard applies in the instant case.

MCL 211.2(2) provides, in pertinent part: “The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.” Thus, the tax status of property must be determined each year on tax day.

I. Public Health Exemption Under MCL 211.7r.

The exemption for real estate, buildings and other property used for clinic, hospital or public health purposes (the “public health exemption”) is found in MCL 211.7r, which states in pertinent part:

The real estate with the buildings and other property located on the real estate on that acreage, owned and occupied by a non-profit trust and used for hospital or public health purposes is exempt from taxation under this act, but not including excess acreage not actively utilized for hospital or public health purposes and real estate and dwellings located on that acreage used for dwelling purposes for resident physicians and their families.

Thus, to qualify for the public health property tax exemption, Petitioner must meet the following three tests: (1) Petitioner must be a nonprofit trust; (2) Petitioner must own and occupy the real property; and (3) Petitioner must use the property for hospital or public health purposes.

As for the first test, the Michigan Supreme Court has broadly interpreted the phrase “nonprofit trust” to include nonprofit corporations when considering it in the context of this portion of the General Property Tax Act. *Oakwood Hospital Corp v State Tax Commission*, 385 Mich 704, 708; 190 NW2d 105, 107 (1971). Petitioner is a nonprofit corporation. As such, Petitioner meets the first test. As for the second test, the parties agree that Petitioner owns and occupies the subject property and the facts do not suggest otherwise. Hence, the only issue is whether Petitioner uses the subject property for hospital or public health purposes.

Petitioner does not claim to be a hospital. Instead, Petitioner asserts that it uses the subject property for public health purposes. The phrase “public health purposes” is not defined in the GPTA. When a phrase is not defined in a statute, a court may consult the dictionary definition. *Yaldo v North Pointe Ins Co*, 217 Mich App 617, 621; 552 NW2d 657 (1996). In *Rose Hill Center, Inc v Holly Township*, 224 Mich App 33; 568 NW2d 332 (1997), the Court of Appeals adopted the following *American Heritage Dictionary* definition of “public health”:

The art and science of protecting and improving community health by means of preventive medicine, health education, communicable disease control, and the application of the social and sanitary sciences. *Id.* at 33.

After considering the services provided by the petitioner, which included “...psychiatric evaluation and diagnosis, the prescription and dispensation of medication, and rehabilitation and reintegration programs,” the *Rose Hill* Court held that a treatment facility for mentally ill adults could “...reasonably be considered to be operating a facility for ‘public health purposes.’” *Id.* at 33.

Prior to *Rose Hill*, the Tribunal addressed substantially the same question as that raised in the instant case in *Brookcrest Nursing Home v City of Grandville*, (Docket No. 77220, August 4, 1986) and *Henry Ford Continuing Care Corp v City of Roseville*, (Docket No. 142360, November 19, 1993); namely, whether a skilled nursing home is operated for public health purposes. In each case, the Tribunal held that it was.

In *Brookcrest*, the petitioner provided 24 hour, 7 days a week nursing care to sick, wounded, infirm or aged persons. Similarly, the petitioner in *Henry Ford* provided 24 hour, 7 days a week “...routine and skilled nursing care to the sick and infirm...” and most admissions came directly from acute care hospitals. *Id.* Additionally, the petitioner in *Henry Ford* offered the services of a special care unit for patients with Alzheimer’s disease and dementia.

Importantly, each petitioner did not discriminate in its admissions on the basis of race, religion, color, national origin, sex, age, handicap, marital status, sexual preference or source of payment. For these reasons, the Tribunal finds that the services offered by Petitioner are substantially the same as those offered by the petitioners in *Brookcrest* and *Henry Ford*. Thus, the Tribunal finds that Petitioner is operated for public health purposes.

Moreover, in both *Brookcrest* and *Henry Ford*, the Tribunal compared the services provided by the petitioners to that provided by hospitals. After determining that the terms “hospital” and “public health purposes” were not defined in any tax statute, the Tribunal cited the definition of hospital found in Black’s Law Dictionary, and held that “[w]hile the above-quoted definition of hospital is not wholly satisfying, the essential character of a hospital and this skilled nursing home as facilities that provide specialized, licensed care for the sick and/or aged persons, provide a reasonable and logical basis to conclude that [Petitioner] is used for at least ‘public health purposes,’ if not hospitable purposes.” *Brookcrest*. In *Henry Ford*, the Tribunal held that “[t]he nursing services provided relate directly to [the patients’] health and well being; indeed, some eighty percent of hospital care involves the provision of nursing care, and, in that respect, Petitioner’s nursing home is similar to a hospital.” *Id.*

The Tribunal’s reasoning in these cases is supported by the Public Health Code, 1978 PA 368. As defined in the Public Health Code, skilled nursing facility “...means a hospital long-term care unit, a nursing home, county medical care facility, or other nursing care facility, or a distinct part thereof, certified by the department to provide skilled nursing care.” “Hospital long-term care unit” is defined as “...a nursing care facility, owned and operated by and as part of a hospital, providing organized nursing care and medical treatment to 7 or more unrelated individuals suffering or recovering from illness, injury, or infirmity.” Thus, it is clear that while

Petitioner is not a “hospital” in the strictest sense of the word, it provides the same services that hospitals with long-term care units provide.

Respondent asserts that Petitioner does not qualify for the public health exemption because it deals with the care of individuals instead of focusing more generally on the community’s health. The Tribunal disagrees. It is true that, in *Medical Center v City of Detroit*, (Docket No. 272421, June 30, 2003), the Tribunal stated that “[t]he focus of ‘public health’ is on the *community’s health*.” However, Respondent has misconstrued this statement. In *Medical Center*, the Tribunal also stated that:

In Michigan, the case law applying MCL 211.7r granted exemptions to twenty-four hour care post-surgical nursing homes, old age homes and asylums...Among the numerous organizations that come within the contemplation of the usual statutes exempting “public health” institutions from ad valorem taxation in other states are asylums, associations for the training and furnishing of persons for visiting the sick and serving in hospitals, and nursing homes. (Citations omitted.)

Respondent included this quote from *Medical Center* in its Post Hearing Brief on pages 9 and 10; however, in spite of this it failed to concede that organizations, such as Petitioner, have been granted a public health exemption in previous cases.

Based upon these facts and case law, the Tribunal concludes that Petitioner has established by a preponderance of the evidence that the subject property operates for public health purposes. Therefore, Petitioner qualifies as a public health facility and is exempt from property taxes pursuant to MCL 211.7r.

II. Charitable Use Exemption Under MCL 211.7o and 211.9(a).

The exemption for real and personal property owned and occupied by a nonprofit charitable institution (the “charitable exemption”) is found in MCL 211.7o, which states, in pertinent part:

Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.

A specific exemption for personal property owned and occupied by a nonprofit charitable institution is also found in MCL 211.9, which states, in pertinent part:

The following personal property is exempt from taxation:

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

Recently, in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), the Michigan Supreme Court was asked to “...determine in which instances an organization claiming to perform charity work or work benefiting the public health does so to an extent that would merit the respective tax exemptions, and importantly, whether there are any concrete parameters that can be imposed to assist with these inquiries.” *Id.* at 739. Ultimately, the Court determined that “[t]he statute says nothing about how much ‘charity’ an institution should provide...Had the Legislature wanted such a threshold, it could have easily included one.” *Id.* at 221.

Having found that there is no “charitable” threshold, the Court turned to the question of “...how, in the absence of a statutory yardstick, we should measure whether an institution is a ‘charitable institution’ when it performs some level of charitable work.” *Id.* at 202. The Court began its analysis by restating the test established in *Engineering Society of Detroit v Detroit*, 308 Mich 539; 14 NW2d 79 (1944). Specifically,

(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 purpose for which it was incorporated. *Id.* at 740.

As in *Wexford*, there is no dispute in the instant case as to the first and third parts of this test.

Additionally, there is no dispute that Petitioner is a nonprofit institution. “Instead, the central inquiry is whether petitioner is a ‘charitable institution...’” *Id.* at 204. In addressing this

question, the Supreme Court began by examining the applicable case law. This examination

brought the Court to the definition of charity set forth in *Retirement Homes of the Detroit Annual*

Conference of the United Methodist Church, Inc v Sylvan Twp, 416 Mich 340; 330 NW2d 682

(1982).

We conclude that the definition set forth in *Retirement Homes* ... sufficiently encapsulates, without adding language to the statute, what a claimant must show to be granted a tax exemption as a charitable institution:

“[Charity]...[is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.” (Citations omitted.) *Wexford* at 746.

Thereafter, the Court listed the following factors to consider when determining whether an institution qualifies as a charitable institution.

- (1) A “charitable institution” must be a nonprofit institution.
- (2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.
- (3) A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
- (4) A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.

- (5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. *Id.* at 746.

Applying these factors to the instant case, it is clear that the first factor is undisputed; Petitioner is a nonprofit corporation. The next question, then, is whether Petitioner is organized chiefly, if not solely, for charity. A review of Petitioner’s Amended and Restated Articles of Incorporation reveals the following: (1) that Petitioner shall be operated exclusively for charitable, scientific and educational purposes as a nonprofit corporation (P8); (2) that one of Petitioner’s purposes is:

To provide, on a nonprofit basis, nursing home facilities and services for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care where no adequate housing exists for such groups...to provide elderly persons and handicapped persons with housing facilities and services specially designed to meet their physical, medical and psychological needs, and to promote their health, serenity, happiness and usefulness in longer living, the charges for such facilities and services to be predicated upon the provision, maintenance and operation thereof on a nonprofit basis where no adequate housing exists for such groups...and to provide residential facilities providing room, board and continuous protective oversight to residents of the facility where no adequate housing exists for such groups... (P8);

and (3) another of Petitioner’s purposes is “[t]o acquire, establish, construct, develop, operate and maintain long term care, homes for the aged and other similar facilities, and to initiate, sponsor and carry out programs for the care, treatment and habitation of the sick, infirm and aged.” (P8) Thus, the Tribunal finds that Petitioner is organized chiefly, if not solely, for charity. Moreover, as in *Wexford*, “Respondent has pointed to no other reason for petitioner’s existence. Nor has respondent shown any evidence that petitioner is not actively pursuing its mission to the exclusion of any noncharitable activities.” *Id.* at 746.

As for the third factor, Petitioner's Admissions Policy states: "Applications for admission are received without regard to race, color, national origin, religion, marital status, sex, sexual preference, handicap or age." (P14, p23) Petitioner admits patients on a first-come, first-served basis. (T p72) Thus, as in *Wexford*, Petitioner "...operates under an open-access policy under which it accepts any patient who walks through its doors, with preferential treatment given to no one." *Id.* at 247. Moreover, Petitioner admits patients first and later verifies the source of payment; Petitioner will continue to provide treatment even if a patient is unable to pay. (T, p69-71) It is true that Petitioner does not admit certain patients, such as those under the age of fifteen years, those with a mental condition that could disturb other patients, and those known to have tuberculosis. (P14, p23) However, the Tribunal finds that these restrictions are necessary for Petitioner's operation and are not discriminatory. As such, Petitioner meets the third factor.

Under the fourth factor, which restates the *Retirement Homes* definition of charity, Petitioner clearly qualifies as a charitable institution because it relieves people's bodies from disease, suffering or constraint. There has been no evidence to the contrary. Moreover, the Tribunal agrees with Petitioner that it lessens the burdens of government. As the *Wexford* Court explained,

..."lessening the burdens of government" is a component of the definition of "charity" found in *Retirement Homes*...Implicit in the definition is that relieving bodies from disease or suffering *is* lessening the burden of government. In other words, petitioner does not have to prove that its actions lessen the burden of government. Rather, it has to prove, as it did, that it "reliev[es] their bodies from disease, suffering or constraint," which is, by its nature, a lessening of the burden of government. In any event, even though petitioner helps to enroll patients in Medicare and Medicaid, it still subsidizes the cost of care in light of the government's underpayment, thus lessening the government's burden of covering the full cost of a person's care. *Id.* at 748.

The fifth factor, that Petitioner can charge for its services as long as the charges are not more than what is needed for its successful maintenance, is obviously met for the 2002 and 2003

tax years. According to Mr. Richards, “[t]he reimbursement we receive from Medicaid is far below our actual cost of providing care.” (T, p106) For tax years 2002 and 2003, Petitioner’s Medicaid losses alone were \$743,657 and \$895,999, respectively, which amounted to over \$1.6 million dollars of unreimbursed patient care. (R8) Thus, it is clear that Petitioner did not charge more for its services than what was needed during the 2002 and 2003 tax years.

When asked if Petitioner limits the number of Medicaid patients it accepts, Mr. Richards testified that it did not. Mr. Richards acknowledged that if it did, or if it refused to accept Medicaid patients altogether, its losses would be reduced. (T, p117) As in *Wexford*, even though “...Petitioner sustains notable financial losses by not restricting the number of Medicare and Medicaid patients it accepts, it bears those losses rather than restricting its treatment of patients who cannot afford to pay.” *Id.* at 747. When questioned as to how Petitioner managed to stay open, in spite of the significant losses, Mr. Richards stated that it was primarily through the support of St. John Health. (T, p117) Again, Petitioner’s situation is much the same as that of the petitioner in *Wexford*. “The losses the institution sustains are not fully subsidized by the patients, but by petitioner’s parent corporations, patients who can afford to pay, and, to some extent, by government reimbursements.” *Id.* at 747.

At the end of the hearing, the Tribunal requested that, in their post hearing briefs, the parties address the issue of losses that result from Medicaid payments. In response, Respondent argued that:

If this Tribunal were to grant issuing Petitioner’s exemption based upon the mere fact that they have a revenue shortfall mandated by the government, then every doctor, dentist, hospital, physical therapist and other professional organization which accepts Medicaid and Medicare as a payment plan would then be entitled to argue this same position and be granted an exemption under Michigan law. (Post Hearing Brief, p18)

Clearly, this “mere fact” alone would not be enough for a petitioner to qualify for a charitable exemption. Again, recognizing that revenue losses are subsidized by parent corporations, patients who can afford to pay, and, to some extent, by government reimbursements, the *Wexford* Court held that,

...despite any government aid, the beneficiary of the medical care receives a gift...Moreover, it is clear in this case that the reimbursements petitioner receives from government funding fall well short of defraying the costs petitioner incurs to render medical care. Thus, not only are Medicare and Medicaid patients receiving a gift from petitioner, but petitioner is not fully recouping its costs from the government because of the government underpayments. *Id.* at 747.

Given that Petitioner’s 2004 fiscal year end figures had not been completed at the time of the hearing, the 2004 tax year requires additional consideration. Mr. Richards testified that, in 2004, Petitioner would experience a gain in revenues instead of a loss. At the end of the third quarter of Petitioner’s fiscal year, March 31, 2004, this gain equated to \$610,295. (T, pp114-115) Mr. Richards explained that the reason for this gain was due to: (1) cost-cutting; and (2) the Medicaid provider tax. (T, p115) Mr. Richards testified that the purpose of the tax was “[t]o help supplement the Medicaid rates.” (T, p116) According to Mr. Richards, the Medicaid provider tax is a per bed tax paid to the State of Michigan by facilities such as Petitioner. The State utilizes this tax revenue as matching funds for federal government revenues. The resulting revenue is then returned to the facilities that paid the tax as an increase in Medicaid payment.

Mr. Richards explained that even with the increased Medicaid payment, the cost of patient care exceeded the amount paid during the 2004 fiscal year. In 2004, Petitioner’s Medicaid rate was approximately \$138 per day. With the provider tax, the amount received increased to \$150. On the other hand, Petitioner’s cost of care averaged \$175 per day. (T, p122-123) When asked why Petitioner would report a gain for its 2004 fiscal year, in spite of this loss, Petitioner explained that was due, in part, to an increase in Petitioner’s average number of

patients. In 2001, Petitioner averaged 210 patients per day, while in 2004, Petitioner averaged 223 to 224 patients per day. (T, p123) Finally, Mr. Richards testified that even though Petitioner might show a profit, "...the profit goes right back into the organization for new programs and services, for capital improvement for the organization, so it goes right back into the organization." (T, p36) Given this testimony, the Tribunal finds that Petitioner did not charge more for its services than what was needed during the 2004 tax year.

Finally, the sixth factor, which is really more of summary statement, provides that 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." *Wexford* at 746. In the instant case, it is clear that Petitioner is a charitable institution, having met all five of the *Wexford* factors. As such, Petitioner "...need not meet any monetary threshold of charity to merit the charitable institution exemption...." *Wexford* at 746.

In summary, the Tribunal finds that Petitioner has met the factors established by the *Wexford* Court to use in determining whether an organization is charitable. As such, Petitioner has met its burden of proof by proving by a preponderance of the evidence that it is exempt from property taxes as a charitable institution under MCL 211.7o and under MCL 211.9(a). Moreover, the Tribunal finds that Petitioner has proven by a preponderance of the evidence that it owns and occupies the subject property for public health purposes, making it exempt from property taxes under MCL 211.7r.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the 2002, 2003 and 2004 tax years are those shown on the third page of this Opinion and Judgment.

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 the assessed and taxable values in the amounts as finally shown on the third page of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Order. 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 as required by this Order within 20 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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 Order. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods (i) after December 31, 2002 at the rate of 2.78% for calendar year 2003; (ii) after December 31, 2003, at the rate of 2.16% for calendar year 2004; (iii) after December 31, 2004, at a rate of 2.07% for the calendar year 2005; and after December 31, 2005, at a rate of 3.66% for the calendar year 2006.

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

MICHIGAN TAX TRIBUNAL

Entered: August 31, 2006

By: Patricia L. Halm