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

Charter Development Co, LLC,
Petitioner,

v

MTT Docket No. 304877

Township of York,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT PURSUANT TO MCR 2.116(I)(1)

In this case, Petitioner, Charter Development Company, LLC, requests that property it owns located in York Township, Michigan, be exempted from Michigan ad valorem property taxes under MCL 211.7z. Petitioner is a limited liability company and is wholly owned by National Heritage Academies, Inc. (NHA), a for-profit corporation. Petitioner leases the property at issue to NHA. In turn, NHA leases the property to South Arbor Charter Academy, a nonprofit corporation. For the reasons set forth herein, the Tribunal finds that the property does not qualify for a property tax exemption under MCL 211.7z.

The parties requested that this case be decided on briefs and on stipulated facts and exhibits. With the information provided, the Tribunal finds that there are no genuine issues of material fact and that Respondent is entitled to judgment as a matter of law pursuant to MCR 2.116(I)(1).

The property at issue (the subject property) consists of one parcel of real property, known as Parcel No. 81-19-02-100-019. The subject property's true cash values (TCV), state equalized and assessed values (SEV/AV), and taxable values (TV), as established by Respondent and affirmed by the Tribunal are:

Year	TCV	SEV/AV	TV
2001	$4,438,000.00	$2,219,000	$2,219,000
2002	$5,601,400.00	$2,800,700	$2,800,700
2003	$5,751,600.00	$2,875,800	$2,842,700
2004	$5,919,600.00	$2,959,800	$2,908,000
2005	$6,150,200.00	$3,075,100	$2,974,800

SUMMARY OF PETITIONER'S CASE

According to Petitioner, there are two issues in this case. The first issue is an argument made by Respondent, namely that Petitioner is estopped from claiming an exemption from the 2001-2003 assessments because, as discussed more fully below, Petitioner knowingly, willingly and intentionally waived the right to challenge the subject property's proposed corrected assessed and taxable values. If that issue is resolved in Petitioner's favor, the second issue that must be resolved is whether the subject property is exempt under MCL 211.7z.

The facts leading up to the first issue are, for the most part, not in dispute and are set forth herein in paragraphs 15 through 20 of the Findings of Fact section of this Order. To summarize, after determining that the subject property was not exempt from property taxes, Respondent began the process of having the property placed on the assessment roll as omitted property pursuant to MCL 211.154. Respondent completed the necessary form[1] and mailed it to Petitioner. Petitioner signed the form and returned it to Respondent. The only issue in this regard is whether or not Petitioner checked the box stating that it concurred with the action requested by Respondent. Upon receipt, Respondent mailed the form to the State Tax Commission, which on February 10, 2004, issued an Order directing Respondent to place the

[1] This form is known as Form L-4154, and is titled "Assessor or Equalization Director's Notice of Property Incorrectly Reported or Omitted from Assessment Roll." This Form is now known as Form 627.

subject property on the assessment rolls for the 2001, 2002 and 2003 tax years. Petitioner filed this appeal on March 11, 2004.

In response to Respondent's claim that it is estopped from filing this appeal, Petitioner argues that to establish equitable estoppel, Respondent must prove the following:

1. [T]hat the Petitioner made a false representation or concealed a material fact,
2. [W]ith the expectation that Respondent would rely upon that misrepresentation or concealment,
3. [W]ith actual knowledge of the actual facts on the part of the Petitioner. See e.g. *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263; 562 NW2d 648 (1997). (Petitioner's Trial Brief, p3)

In its defense, Petitioner states that not only is there no indication that Respondent detrimentally relied on anything Petitioner said or did:

> Petitioner's representatives . . . were either mistaken and/or confused about the legality or illegality of assessing Petitioner for the years in question and/or about the effect of filling out the Assessor's Notice referenced therein. In any event, it is and should be clear that, in returning the Assessor's Notice, [Petitioner] certainly did not knowingly, willingly and voluntarily intend to waive Petitioner's right to challenge the subject assessments or to lead the Respondent astray in any manner. (Petitioner's Trial Brief, p3)

As to the second issue, Petitioner asserts that the subject property is leased to South Arbor Charter Academy, which is a public school academy. "The operation of the Academy is funded with funds received from the State of Michigan which, in turn, generates the funds, in whole or in part, from real property taxes." (Petitioner's Brief, p5) Petitioner relies not only on MCL 211.7z in support of its position, but also on Article IX, Section 4 of the State Constitution of 1963. According to Petitioner, this Article and Section of Michigan's Constitution:

> . . .clearly establishes the will and intent of the People of the State of Michigan to exempt public schools such as the Academy from any taxation in providing as follows:
>
> > Property owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes.

***

> With the above in mind, it is and should be clear that to subject the Property to real estate taxes, when it is used primarily (if not solely) for the purpose of operating a public school, cuts against both the letter, spirit, will and intent of the People of the State of Michigan, their legislature, and the laws and Constitution of this State and, therefore, simply cannot be allowed. Further, to allow this property to be subjected to the imposition of real estate taxes will result in the totally inconsistent (and nonsensically circular) result of having the real estate taxes on this Property being paid (because of the pass-through nature of the Lease and sub-lease) by the real property taxes levied on the taxpayers of this State, which, in turn, fund the Academy. Apart from being contrary to the letter, spirit, will and intent of the People of the State of Michigan and their legislature as well as the Constitution and laws of this State, that simply makes no sense.
>
> As and, perhaps, more importantly, requiring taxes to be paid on this Property will result in a denial of the Academy's right to equal protection of the laws as guaranteed by Article 1, Section 2 of the Michigan Constitution of 1963, by requiring Academy – as a charter public school – to (albeit indirectly) pay real estate taxes when no other public schools in the State are required to do so. (Petitioner's Trial Brief, pp7-8)

Finally, in rebuffing Respondent's statutory interpretation, Petitioner argues that case law requires that **"[w]hen there is doubt, tax laws are to be construed in favor of the taxpayer**," and the Tribunal. . .will certainly have to acknowledge that, at a **minimum**, there is **doubt** here and, therefore, MCLA 211.7z must be construed in favor of the Petitioner." (Emphasis in original.) (Petitioner's Response to Respondent's Brief, p5)

SUMMARY OF RESPONDENT'S RESPONSE

Respondent argues that Petitioner is estopped from claiming a property tax exemption for the subject property for the 2001, 2002 and 2003 tax years. In support of this position, Respondent states that a representative of Petitioner contacted Respondent asserting that it should be receiving a property tax bill. Thereafter, when presented with Form L-4154, Petitioner "did not mark the box stating 'I do not concur with this request for corrected Assessed Value

and/or Taxable Value.'" (Respondent's Brief, p8) Because of these actions, Respondent believes that Petitioner should not be allowed to appeal the State Tax Commission's Order.

Respondent begins its response to Petitioner's exemption claim under MCL 211.7n by discussing "two rules of statutory construction that must be kept in mind. The first is that exemptions are not to be implied, and the second is that exemption provisions must be strictly construed in favor of the taxing authority." (Respondent's Brief, p3) Respondent cites several cases indicating approval of these rules, including *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980), wherein the Michigan Supreme Court reiterated the following rule established in previous cases:

> [E]xemption from taxation effects the unequal removal of the burden generally placed on all landowners to share in the support of local government (and) (s)ince exemption is the antithesis of tax equality, exemption statutes are to be strictly construed in favor of the taxing unit. *Id*., p753.

Applying this rule to the case at hand, Respondent argues:

> Petitioner in fact is not "incorporated." Rather, it is a "limited liability company" organized under the Michigan Limited Liability Act (P.A. 23 of 1993), as appears by its Articles of Incorporation. . .As noted. . .above, since exemptions are strictly construed and may not be implied, this alone may be sufficient to deny the claimed exemption. The Limited Liability Act was enacted in 1993, and the Legislature could surely have added the words "*or organized*" to MCL §211.7z in the subsequent twelve (12) years, had it intended the exemption to apply to such entities and not just to those which are "*incorporated*." (Emphasis in original.) Respondent's Brief, p5)

Respondent next argued that even if MCL 211.7z did not require Petitioner to be incorporated, the exemption must still be denied because Petitioner does not lease the subject property to South Arbor Charter Academy. Instead, Petitioner leases the subject property to NHA, a for-profit corporation, who then leases the property to the Academy. Given this, Petitioner does not lease the subject property to the educational institution.

Even if this were the case, Respondent argues that the subject property would not have been exempt had it been occupied by Petitioner solely for the purposes it was organized. Respondent cites Petitioner's Articles of Organization, which state:

> . . . "the purpose or purposes for which the Company is formed is to engage in any activity within the purposes for which a limited liability company may be formed under the Act." Section 201 of the Act, MCL §450.4201 sets forth the purposes for which a limited liability company may be formed, in pertinent part as follows:
>
> > Sec. 201 "A limited liability company may be formed under this act for any lawful purpose for which a domestic corporation or a domestic partnership could be formed, except as otherwise provided by law."
>
> Clearly, this is not a purpose which would have entitled Petitioner to an exemption if it occupied the Property rather than leasing it to [South Arbor Charter Academy]. (Respondent's Brief, p5)

In its Reply Brief, Respondent addresses Petitioner's exemption claim under Article IX, Section 4. "The principal and pervasive flaw in Petitioner's argument is a failure to recognize that it is a for-profit entity and that [the exemption] it cites require[s] that the claimant for the exemption be a non-profit institution." (Respondent's Reply Brief, p2)

In response to Petitioner's statement, cited above, that "it is and should be clear that to subject the Property to real estate taxes, when it is used primarily (if not solely) for the purpose of operating a public school. . . ." Respondent asserts that the property is not used exclusively for educational purposes.

> Rather, in accordance with Section 4.3 of the Lease between NHA and [South Arbor Charter Academy] . . . NHA, another for-profit entity, like Petitioner, has reserved "the use of the Premises during the Reserved Periods." Section 4.3 reads as follows:
>
> A. For purposes of this Section 4.3, the "Reserved Periods" means:
>
> i. the period between the regular school session for one year (e.g. 2000-2001 school year) and the subsequent regular school session for the next school year (e.g. 2001-2002 school year) which is approximately June 15 to August 15 of each year; and

ii. the approximately week-long period in which school is not in session in the spring semester of each school year; and

iii. the period in which school is not in session over Christmas and New Year's holidays.

B. Landlord reserves the use of the Premises during the Reserved Period exempt to the extent (i) Tenant is required to use the premises pursuant to an educational law, requirement or standard of the State of Michigan; or (ii) Tenant has obtained the prior written consent of Landlord for the use of the Premises by Tenant during the Reserved Periods.

C. Landlord shall reimburse Tenant for its actual use of the Premises during the Reserved Periods pursuant to the Attached use fee schedule or, if none attached, use fees as determined from time to time by mutual agreement of Landlord and tenant.

Thus, for a minimum of 10 or 11 weeks (approximately 20% of the year) NHA has the use of the Property for whatever other purposes it wishes, and is free to make as much profit as it can from the Property during those periods, in addition to what it may make from [South Arbor Charter Academy] during the school year. (Respondent's Brief, pp3-4)

Finally, as to Petitioner's equal protection argument, Respondent asserts that "Petitioner has no legal right to make this argument on behalf of [South Arbor Charter Academy]." (Respondent's Brief, p5) Moreover, it is "all other similarly situated academies (i.e., those leasing property from for-profit entities) [that] are or should be similarly treated, and Petitioner has not claimed or shown that only [South Arbor Charter Academy] is so treated." (Respondent's Brief, p5)

FINDINGS OF FACTS

The parties have stipulated to the following facts:

1. Petitioner is a validly formed Michigan limited liability company in good standing in the State of Michigan, County of Kent, whose address is 3850 Broadmoor S.E., Suite 201, Grand Rapids, Michigan 49512, whose former address on the tax rolls was 989 Spaulding S.E., Grand Rapids, Michigan 49546.

2. Petitioner is the owner of the real estate at 8200 Carpenter Road, Ypsilanti, Michigan 48197.

3. The [subject property] is assessed as Permanent Parcel No. 81-19-02-100-019 and is located in York Township, Washtenaw County, Michigan and within the Milan Area Schools.

4. The [subject property] is classified as "commercial."

5. The tax years in controversy are 2001, 2002, 2003, 2004, and 2005.

6. The State Equalized Value and Taxable Value of the Property for each of the years is as follows:

Year	AV	SEV	TV
2001	$2,219,000	$2,219,000	$2,219,000
2002	$2,800,700	$2,800,700	$2,800,700
2003	$2,875,800	$2,875,800	$2,842,700
2004	$2,959,800	$2,959,800	$2,908,000
2005	$3,075,100	$3,075,100	$2,974,800

7. The level of Assessment each year is at 50%.

8. The [subject property] was designed as a school building and is used by a public school academy as a Michigan public school.

9. The [subject property] is leased by Petitioner as Landlord to National Heritage Academies, a Michigan corporation ('NHA') of 989 Spaulding Avenue, S.E., Grand Rapids, Michigan 49546, as tenant, pursuant to a Master Lease and amendments effective January 1, 1999, together with amendments. . .The entire rent paid by South Arbor Charter Academy to NHA is payable to Petitioner at no markup.

10. The [subject property] in turn is sub-leased by NHA to South Arbor Charter Academy pursuant to a net Lease dated June 28, 2000, in which the tenant is obligated to pay all operating expenses of the [subject property] including any real estate taxes that may be levied against the [subject property].

11. The Lease is for a period of one year and has been annually renewed over the last years by a series of Amendments to the Lease. . .The only changes have been to paragraph 2.2 of the Lease in which the term has been extended annually, and to the amount of rent due under the Lease which has increased as follows:

Term	Annual Rent	Monthly Installment
08/01/00 to 6/30/01- Adjusted to	$512,000.00 $728,976.00	$46,545.45 $60,748.00
07/01/01 to 06/30/02	$907,530.00	$75,636.66
07/01/02 to 06/30/03	$885,600.00	$73,800.00
07/01/03 to 06/30/04	$898,560.00	$74,880.00
07/01/04 to 06/30/05	$898,500.00	$74,880.00
07/01/05 to 06/30/06	$898,500.00	$74,880.00

The rent is adjusted by amendments to the Lease when the Owner makes additional capital improvements to the school building covered by the Lease.

12. There is a Management Agreement between South Arbor and NHA which provides that NHA pays all costs of operating South Arbor Charter Academy and receives all revenues by the Academy.

13. South Arbor Charter Academy is a Michigan public school formed as a Charter Academy with its Charter with Central Michigan University Board of Trustees. The operation of the Academy is funded with funds received from the State of Michigan which, in turn, generates the funds, in whole or in part, from real property taxes.

14. South Arbor Charter Academy as a public school formed as a Charter Academy is not allowed to raise funds through millage for the construction of school buildings or other reasons and must rely on funds received from the State of Michigan on a per pupil allotment of State aid to Public Schools for both operations and the construction, financing or leasing of school building facilities.

15. Respondent's Assessor had classified the [subject property] on the Respondent's tax roll as exempt as a public school for tax years 2001, 2002, and 2003. On April 9, 2003, the Assessor received a Memo from the Township Treasurer, Sally Donahue. . .The Memo memorializes a phone call from Dennis Cline, a representative of Petitioner which indicated Petitioner "is the owner of both the building and the land" and "should be receiving a tax bill." Mr. Cline no longer works for Petitioner but it is the belief of Petitioner "that Dennis Cline contacted the Township Assessor, Dan Smith, was that he [sic] was aware that many assessors had taken the position that charter schools leasing property from a non-tax exempt entity were being assessed and charged real estate taxes for the property and, therefore, he wanted to make the Township aware of that position as the owner of the South Arbor Charter Academy property at 8200 Carpenter Road, Ypsilanti, Michigan, which had been classified as exempt by the Charter Township of York."

16. On December 17, 2003, Respondent's Assessor prepared an "Assessor's or Equalization Director's Notice of Property Incorrectly Reported or Omitted from Assessment Roll" ("Assessor's Notice") determining an assessed value and fully assessing the [subject property] as non-exempt in accordance with the form attached as Exhibit "9" which was forwarded to Petitioner, and Petitioner returned the form dated December 28, 2003, and signed by Greg Lambert, who is the Vice President and Chief Financial Officer of National Heritage Academies, Inc., the sole owner of the Petitioner. Mr. Lambert does not recall if he did or did not mark the box stating "I concur with this request for corrected Assessed Value and/or Taxable Value." However, Mr. Lambert did not mark the box stating "I do not concur with this request for corrected Assessed Value and/or Taxable Value. (The owner who checks this box must submit to the assessor an explanation of the reason for not concurring)." No such information was provided by Mr. Lambert nor did he enter any "Comments or Explanations" in the large box on the form provided for such.

17. The copy of the Assessors' Notice in the Petitioner's file is signed and dated the same date with no notation of any of the boxes being checked. . . .

18. Petitioner received State of Michigan Tax Commission Official Order No. 154-03-2185 on February 17, 2004, dated February 10, 2004, adding the [subject property] to the tax rolls at the valuation levels set forth by the Respondent for tax years 2001, 2002, and 2003 under MCL §211.154. . . .

19. It is Petitioner's position that: (a) Greg Lambert was aware of the position being taken by assessors around the State of Michigan that charter schools leasing property from non-tax exempt entities were being assessed for real estate tax purposes; and (b) Greg Lambert did not believe that his returning the Assessors Notice amounted to any waiver of any rights to contest the assessment, but merely acknowledged that the property was being put back on the tax rolls and, in fact, when Petitioner received the February 10, 2004, State Tax Commission Order, Greg Lambert immediately proceeded to put into place steps to appeal the State Tax Commission Order and the legal conclusion underlying the taxing of the Property for the years 2001, 2002, and 2003 by filing this appeal to the Tax Tribunal.

20. The appeal of the Petitioner to the Michigan Tax Tribunal covered by this case is with respect to the State Tax Commission Order and not the Assessors Notice.

21. Although facts have been set forth in this Stipulation based in part upon the attached Exhibits, the actual provisions of the Exhibits are part of the stipulated facts and the Exhibits shall control in the event of any conflict between them and the facts as set forth in this Stipulation.

The Tribunal adopts these stipulated facts as its findings of facts.

Stipulated Exhibits

1. Articles of Organization of Petitioner, Charter Development Company, LLC, filed September 9, 1996.

2. Operating Agreement of Petitioner, Charter Development Company, LLC.
    a. Original Operating Agreement effective April 29, 1996.
    b. First Amendment effective January 1, 1997.

3. Master Lease.
    a. Master Lease Agreement dated January 1, 1999, between Charter Development Company, LLC ("CDC"), as landlord, and NHA, as Tenant (The South Arbor property was not part of this lease.)
    b. Amendment to Lease effective August 1, 1999, between CDC and NHA modifying the term of the Master Lease to June 30, 2005.
    c. Second Amendment to Lease effective July 1, 2000, between CDC and NHA adding South Arbor Academy as a property covered by the Master Lease.
    d. Third Amendment to Lease effective May 1, 2001, adding additional properties to the Master Lease.
    e. Fourth Amendment to Lease effective August 1, 2001, extending the term of the Master Lease to June 30, 2010, and providing for a CPI adjustment in the rent paid.

4. Lease to Charter School.
    a. Lease dated June 28, 2000, between National Heritage Academies ("NHA"), as Landlord, and South Arbor Charter Academy ("Charter School"), as Tenant, from August 1, 2000, to June 30, 2001, at a rent of $512,000 per year.[2]
    b. Lease Amendment dated January 17, 2001, between NHA and Charter School changing the rent to $728,976.00 per year.
    c. Second Amendment to Lease dated May 16, 2001, between NHA and Charter School changing the term from July 1, 2001 to June 30, 2002, and the rent to $907,520.00 per year.
    d. Third Amendment to Lease dated April 17, 2002, between NHA and Charter School changing the term from July 1, 2002 to June 30, 2003, and the rent to $885,600.00 per year.
    e. Fourth Amendment to Lease dated May 21, 2003, between NHA and Charter School changing the term from July 1, 2003 to June 30, 2004, and the rent to $898,560.00 per year.
    f. Fifth Amendment to Lease dated May 12, 2004, between NHA and Charter School changing the term from July 1, 2004 to June 30, 2005 and the rent does not change.

5. Management Agreement.

[2] This Document was not submitted to the Tribunal.

a. Management Agreement dated August 17, 1999, between NHA and Charter School for term from August 1, 1999 to July 30, 2004.
b. Management Agreement dated September 15, 2004, between NHA and Charter School with a term of July 1, 2004 to June 30, 2009.

6. Charter Contract.
   a. Initial Charter Contract dated August 27, 1999, issued by Central Michigan University Board of Trustees ("Central Michigan University") to Charter School.
   b. Contract Amendment No. 1 effective August 31, 1999.
   c. Contract Amendment No. 2 effective August 1, 2000.
   d. Contract Amendment No. 3 effective August 1, 2000.
   e. Contract Amendment No. 4 effective August 1, 2002.
   f. Contract Amendment No. 5 effective July 1, 2003.

7. Charter Contract.
   a. Contract between Central Michigan University and Charter School dated August 27, 2004.[3]
   b. Contract Amendment No. 1 effective July 1, 2004.

8. April 9, 2003 Township Treasurer Memo.

9. December 17, 2003, Assessor's or Equalization Director's Notice of Property Incorrectly Reported or Omitted from Assessment Roll in the records of York Township.

10. December 17, 2003. Assessor's or Equalization Director's Notice of Property Incorrectly Reported or Omitted from Assessment Roll in the possession of the Petitioner, taxpayer.

11. Michigan Tax Commission Official Order No. 154-03-2185 on February 17, 2004, dated February 10, 2004, adding the [subject property] to the tax rolls at the valuation levels set forth by the Respondent for tax years 2001, 2002, and 2003 under MCL §211.154.

CONCLUSIONS OF LAW

The first issue to be addressed is whether Petitioner is estopped, as Respondent argues, from bringing this appeal. Petitioner asserts that Respondent's argument is one of equitable estoppel; however, from the pleadings, the Tribunal is unable to make this determination.

[3] This document was not submitted to the Tribunal.

Regardless, in *Leavitt v City of Novi*, unpublished opinion per curiam of the Court of Appeals, decided November 18, 2008, (Docket No. 279344), a case in which the petitioner argued estoppel, the court held:

> Unless expressly authorized by statute, a legislative tribunal does not have equitable jurisdiction. After reviewing the MTT's statutorily authorized powers, this Court has concluded that the MTT does not have the power to grant equitable remedies. Therefore, petitioners' argument that the MTT should have found that equitable estoppel applies lacks merit. (Citations omitted.) *Id*.

Even if the Tribunal had the power to grant an equitable remedy, it would not do so in this case. As previously discussed, Respondent's filing with the State Tax Commission was brought under MCL 211.154. Pursuant to subsection 7, "[a] person to whom property is assessed under this section may appeal the state tax commission's order to the Michigan tax tribunal." MCL 211.154(7). Therefore, it is clear that Petitioner had the right to bring this appeal.

The next issue to be addressed is whether the subject property should be exempt from property taxes under MCL 211.7z. The general property tax act provides that "all property, real and personal, within the jurisdiction of this state, *not expressly exempted*, shall be subject to taxation." MCL 211.1. (Emphasis added.) Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 348; 330 NW2d 682 (1982).

> The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:
>
> > [I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and **an alleged grant of exemption will be strictly construed** and cannot be made out by

> inference or implication but **must be beyond reasonable doubt.** In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. *Michigan Bell Telephone Company v Department of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, Taxation (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.*, p207.

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

> [T]he **beyond a reasonable doubt** standard applies when the petitioner attempts to establish that an entire class of exemptions was intended by Legislature. However, the **preponderance of the evidence** standard applies when a petitioner attempts to establish membership in an already exempt class. (Emphasis added.) *Id.*, pp494-495.

Moreover, while it is true, as Petitioner asserts, that if there is a doubt as to how to construe a tax statute, it is construed in favor of the taxpayer. However, Petitioner's reliance on this principle is incorrect. The issue in this case concerns a request for an *exemption from tax*, which, as discussed by Justice Cooley and confirmed by many, many decisions of Michigan's courts, requires the opposite construction. "Exemption from taxation effects the unequal removal of the burden generally placed on all landowners to share in the support of local government. Since exemption is the antithesis of tax equality, *exemption statutes are to be strictly construed*

in favor of the taxing unit." (Emphasis added.) *Michigan Baptist Homes and Development Company v City of Ann Arbor*, 396 Mich 660, 669-670; 242 NW2d 749 (1976).

In this case, Petitioner asserts that the subject property is exempt from property taxes under MCL 211.7z because it is leased to a state supported educational institution. Property leased to educational institutions has been recognized as an exempt class. Because Petitioner is attempting to establish that the subject property is a member in that class, the preponderance of evidence standard applies.

MCL 211.7z provides, in pertinent part:

> (1) Property which is leased, loaned, or otherwise made available to a school district, community college, or other state supported educational institution, or a nonprofit educational institution *which would have been exempt from ad valorem taxation had it been occupied by its owner solely for the purposes for which it was incorporated*, while it is used by the school district, community college, or other state supported educational institution, or a nonprofit educational institution primarily for public school or other educational purposes is exempt from taxation under this act. (Emphasis added.)

Thus, to qualify for an exemption under MCL 211.7z, the property:

1. Must be leased, loaned, or otherwise made available to a school district, community college, other state supported educational institution, or nonprofit educational institution;
2. Must be used for public school or other educational purpose by the school district, community college, other state supported educational institution, or nonprofit educational institution to which the property is leased, loaned, or otherwise made available; and
3. Would have been exempt from property taxes if the owner occupied it solely for the purposes for which the owner was incorporated.

As to the first part of the test, there is no dispute that Petitioner owns the subject property and leases it to NHA, a for-profit corporation. The Tribunal takes judicial notice of NHA's most recent Restated Articles of Incorporation, which were filed with Michigan's Bureau of

Commercial Services, Corporation Division, on December 22, 2003. Pursuant to that document: "The purpose or purposes for which the Corporation [NHA] is formed is to engage in any one or more lawful acts or activities within the purposes for which corporations may be organized under the Michigan Business Corporation Act." In subsequent Annual Reports, NHA lists its purpose as "educational management company" or "management company." Therefore, it is clear that the first part of the test is not met because the subject property is not leased by its owner to a school district, community college, other state supported educational institution, or nonprofit educational institution.

As to the second part of the test, there is no dispute that the subject property is *ultimately* used for public school or other educational purposes, most of the time. However, the corporation (NHA) that leases the subject property from its wholly owned LLC (Petitioner) does not utilize the property for this purpose. Instead, NHA uses the subject property by leasing it to an unrelated non-profit corporation to do what for-profit corporations do, make a profit. Even if this were not true, it cannot be said, as Respondent asserts, that the subject property is used solely for educational purposes. While the lease between NHA and South Arbor Charter Academy was not submitted to the Tribunal, a copy of the lease was provided to Respondent. According to Respondent, the lease permits not only South Arbor Charter Academy to utilize the subject property, it also permits NHA to utilize the property. The fact that the lease permits this use 10 to 11 weeks out of the year was not disputed by Petitioner. Given this, the Tribunal finds that use of the subject property approximately 20% of the time by an entity other than a school district, community college, other state supported educational institution, or nonprofit educational institution does not meet the second part of the test.

The third part of the test requires the property owner to be incorporated. In this case there is no dispute that Petitioner is an LLC and not a corporation. Even if incorporation were not a requirement, the Tribunal would be hard pressed to find that Petitioner meets this test. Pursuant to Petitioner's Articles of Organization, "[t]he purpose or purposes for which the Company is formed is to engage in any activity within the purposes for which a limited liability company may be formed under the Act." This statement provides no information as to what Petitioner's actual purpose is or what Petitioner does. Thus, the Tribunal could not find that if Petitioner occupied the subject property, it occupied it solely for the purpose for which it was organized. Without this, it would be impossible to determine if this use would have been such that the property qualified for a property tax exemption.

Petitioner argues that the Tribunal's charge is to ascertain the Legislature's intent in enacting MCL 211.7z. According to Petitioner:

> MCL 211.7z was enacted in the face and at the time when Article IX, Section 4 of the State Constitution of 1963 clearly established the will and intent of the People of the State of Michigan to exempt public schools from any taxation in providing as follows:
>
> > "Property owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes."
>
> [A]nd the legislature must be deemed to have been aware of the will of the People in this regard and to have acted in accordance with that will in enacting MCLA 211.7z which, by logical necessity, would require a finding that it intended to exempt Petitioner from the imposition of the taxes at issue herein. . . . (Petitioner's Response to Respondent's Brief, p4)

The Tribunal does not understand Petitioner's attempt to connect in time the adoption of Michigan's 1963 Constitution and an amendment to the Constitution that occurred in 1986 wherein the exemption was extended to educational organizations. Moreover, as Respondent pointed out, Article IX, Section 4 requires the property to be owned and occupied by a *nonprofit*

organization. Such is clearly not the situation in this case. Given this, the Tribunal cannot help but find that the will of the People was not to grant a property tax exemption to a for-profit organization.

Finally, the Tribunal finds Petitioner's equal protection argument to be totally without merit. As Respondent stated, Petitioner has no standing to make this argument for South Arbor Charter Academy. The fact that NHA not only leases the subject property to South Arbor Charter Academy but also has a management agreement with them is of no significance in this case, nor is the fact that NHA is ultimately responsible to Petitioner for payment of property taxes levied against the subject property.

For the reasons stated herein, the Tribunal finds that the subject property does not qualify for a property tax exemption under MCL 211.7z. Respondent is granted summary disposition pursuant to MCR 2.116(I)(1).

JUDGMENT

IT IS ORDERED that Petitioner's request for a tax exemption under MCL 211.7z is DENIED.

IT IS FURTHER ORDERED that the subject property's true cash, state equalized, assessed and taxable values for the 2001, 2002, 2003, 2004 and 2005 tax years are as established by Respondent and set forth herein.

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

MICHIGAN TAX TRIBUNAL

Entered: April 8, 2011

By: Patricia L. Halm