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

Michigan Laborers'
Training & Apprenticeship Fund,
Petitioner,

v MTT Docket No. 307588

Township of Breitung,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

FINAL OPINION AND JUDGMENT

The issue in this case is whether Petitioner, Michigan Laborers' Training & Apprenticeship Fund, is an educational institution as defined by MCL 211.7n. If Petitioner meets this definition, property it owns, located in the Township of Breitung (Respondent), is exempt from Michigan's property tax. For the reasons set forth herein, the Tribunal finds that Petitioner is not an educational institution as contemplated by MCL 211.7n and, as such, the property at issue is not exempt from tax.

Petitioner is a trust fund created under the laws of the state of Michigan. Petitioner is a 501(c)(3) organization and is also an educational organization within the meaning of section 170(b)(1)(A)(ii) of the Internal Revenue Code. The property at issue (the subject property) is one of three facilities owned and operated by Petitioner, the other two being located in Wayne, Michigan, and Perry, Michigan. The subject property consists of two[1] parcels of real property, known as Parcel Nos. 2202-132-008 and 2202-132-019, and one parcel of personal property, known as Parcel No. 2202-900-027. The subject property consists of numerous buildings,

[1] The appeal of a third parcel of real property, Parcel No. 2202-132-007-00, was included in the Petition but withdrawn at the hearing due to the sale of the property.

storage facilities and an adjacent parking lot, and is used to educate, train and re-train construction craft laborers, journeymen and apprentices.

The subject property's true cash values (TCV), state equalized and assessed values (SEV/AV), and taxable values (TV), as established by Respondent and confirmed by the Tribunal are:

Parcel Number: 2202-132-008-00 (real)

Year	TCV	SEV/AV	TV
2004	$386,000	$193,000	$16,789
2005	$390,000	$195,000	$19,470
2006	$390,400	$195,200	$20,112

Parcel Number: 2202-132-019-00 (real)

Year	TCV	SEV/AV	TV
2004	$424,400	$242,200	$194,932
2005	$513,200	$256,600	$204,001
2006	$524,600	$262,300	$210,733

Parcel Number: 2202-900-027-00 (personal)

Year	TCV	SEV/AV	TV
2004	$66,800	$33,400	$33,400
2005	$61,600	$30,800	$30,800
2006	$62,800	$31,400	$31,400

*Pursuant to MCL 205.737(5)(a), "…if the tribunal has jurisdiction over a petitioner 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, tax years 2005 and 2006 are automatically added to this petition.

SUMMARY OF PETITIONER'S CASE

It is Petitioner's position that the subject property is exempt from property taxes under MCL 211.7n, which states, in pertinent part:

> Real estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by

> them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act.

In support of this position, Petitioner cited the four-part test established in *Engineering Society of Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944). The four-part test requires that the following factors be satisfied:

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

(2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution;

(3) The claimant must have been incorporated under the laws of this state; and

(4) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

Petitioner contended that there is no dispute between the parties regarding the first and fourth prong. The two issues to be determined are whether MLTAF is an educational institution, and whether the requirement of the claimant being incorporated has been found unconstitutional.

In support of its argument that the Iron Mountain facility is exempt under MCL 211.7n as an educational institution, Petitioner cited several cases. In *David Walcott Kendall Memorial School v City of Grand Rapids*, an institution is an educational institution if it fits into the general scheme of education provided by the state and it makes a substantial contribution toward relieving the burden of government to educate its citizens. *David Walcott Kendall Memorial School v City of Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968) and *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748; 298 Nw2d 422 (1980).

In *Dolan Drive Corporation v Mt Morris Township,* Petitioner requested and received a tax exemption from the Tribunal for a full-year apprenticeship program that had extensive classroom and hands-on training, both in the school and in the field. *See Dolan Drive Corporation pages 2-3.* (Petitioner's Brief, p 5) The Dolan Corporation consisted of the

Saginaw and Flint Trusts of the Saginaw and Flint Area Sheet Metal Workers' Unions, and its sole purpose was to operate a school for the training of apprentices in the Saginaw and Flint local of the Sheet Metal Workers' Union. *Id.*

Petitioner argued that the facts here are more compelling than the facts in the *Dolan Drive* case. Petitioner asserted that its case is similar to *Dolan Drive* in the following ways:

1. Both have been granted exemption from federal income tax;
2. Each institution's purpose is the operation of a school for training of apprentices in a construction craft . . . ;
3. Both have maintained registration with the United States Department of Labor Bureau of Apprenticeship and Training;
4. The subject property in both cases has been used exclusively for classroom and shop instruction of apprentices . . . ;
5. Both employ full-time instructors and operate their schools a minimum of five days a week, fifty-two weeks a year;
6. Both apprenticeship programs consist of a four-year program with extensive classroom and actual hands-on training, both in the school and in the field. Successful completion of both apprenticeship programs leads to the classification of journeyman;
7. Neither institution charges tuition or other fees and the programs are funded by contributions to the respective Trust Funds. (Petitioner's Brief, p 5-6)

Additionally, Petitioner asserted that it has an articulation agreement with Baker College of Oswosso, where courses taken at the Institute are given college-level credit toward a degree from Baker College; this agreement was previously with Lake Superior State University.

(Petitioner's Brief, p 6) Further, MLTAI educates and retrains journeymen. These facts were not in the Dolan case. *Id.* Here, "the program offered by MLTAI is similar to, although much more involved, than the program operated by the Dolan Drive Corporation for which the MTT has previously provided an education exemption." (Petitioner's Post Hearing Brief, p 12)

Petitioner stated that Respondents made a disingenuous argument when they testified that only a few students took advantage of the articulation agreements, because Petitioner has never ascertained the number of students who applied for college credits. (Petitioner's Post Hearing Brief, hereinafter referred to as "Petitioner's Post Hearing Brief" p 9) Petitioner contended that "MLTAF can only make these educational opportunities available, it cannot compel the students to avail themselves of the opportunity." *Id.*

Petitioner relied on the *Dolan Drive* case to indicate that its institution fits into the general scheme of education provided by the State, and that its institution makes a substantial contribution toward relieving the burden of the government. *Id.* The Tax Tribunal in the *Dolan Drive* stated that, "[c]ertainly, petitioners four (4) year, full time, apprentice instruction program, fully funded by its member trust, contributes substantially to the relief of the burden of government." See *Dolan Drive Corporation*, page 6. (Petitioner's Brief, p 6-7) Petitioner asserted that the educational program in *Dolan Drive* allowed those who completed the program to be qualified for career opportunities in the sheet metal trade, and the same is true for their institution. *Id.* Moreover, students who complete MLTAI's program "will earn a handsome salary and a fringe benefit package." *Id.* Thus, they not only have a career, they also contribute significantly to the economy. *Id.*

Petitioner cited several cases in support of its position that the third factor in *Engineering Society of Detroit v Detroit* is unconstitutional. "In *Calvin College v City of Grand Rapids*, the

court stated that [t]he third requirement has since been found unconstitutional." (Citations omitted.) (Petitioner's brief, p 8) This has also been recently upheld in the Wexford case, a Supreme Court case. (Petitioner's brief, p 8) The Supreme Court stated that, "[b]ecause of the 1980 amendments, the second and third factors must now be adapted to correspond with the present wording of MCL 211.7o. Because the legislature did not retain language requiring in-state incorporation, we remove factor three." *Id.* Petitioner stated that the Wexford case involves an exemption under MCL 211.7o but the test laid down in *Engineering Society of Detroit v Detroit* also applies to the exemptions under MCL 211.7n. *Id.* In 1944, when the *Engineering Society of Detroit* case was decided, tax exemptions for charitable (MCL 211.7o) and educational institutions (MCL 211.7n) were included in the same statute (1 Comp. Laws 1929, §3395). *Id.*

Petitioner concluded that its program fits into the general scheme of education provided by the State, because it provides for a career as a construction craft laborer, and this case is similar to the Dolan case. (Petitioner's Post hearing brief, 12) It relieves the government of its educational burden because the courses taught are not only similar to courses taught by colleges and universities, but they are also recognized and given credit toward college degree. *Id.*

In support of its argument that the subject facility is exempt from property taxes Petitioner presented testimony from several witnesses. Their testimonies are as follows in relevant part:

Mr. Donald Lynn Coleman the Director of Training at the Michigan Laborers' Training & Apprenticeship Institute located in Perry, Michigan testified that "the purpose of the Michigan Laborers' Training & Apprenticeship Institute is to train individuals in the construction craft laborer field." (T, p. 19) Mr. Coleman contends that there are wide ranges of jobs for a laborer

in the industry; they include hazardous waste abatement or cleanup, asbestos abatement, lead abatement, highway construction, etc... *Id.* Thus, "there are over 40 different courses listed and then there are different variations of each one of those courses for a specific contractor request and things like that are put on for their employees…" *Id.*

Mr. Coleman testified that Petitioner's annual income is between four and four-and-a-half million. This income comes from grants, as well as from "contributions through hours worked in the field by the labor union members," specifically, thirty-five cents per man hour worked in the field. (T, p. 20)

Mr. Coleman asserted that Petitioner has a nondiscriminatory program that includes non-labor union members and it also has a nondiscriminatory policy. *Id.* He contends that in this last fiscal year, which ended on August 31st, 2006, there were a total of 2828 trainees at Petitioner's facilities; twenty percent of the trainees were non-members. (T, p. 22) "We have local unions, each of [the] training facilities [keep] applications and anyone is welcome to fill out an application and submit it for training at anytime." *Id.* Moreover, Petitioner also sponsors career fairs and attends an average of ten a year and has attended as many as sixteen. (T, p. 24) "Not all the career fairs . . . are for schoolchildren, some of them are for young adults who are disadvantaged adults and we do several of those through the years that are a combination." (T, pp24-25)

Mr. Coleman stated that there are three hundred and eighty-six students trained at the Iron Mountain facility with twenty-eight or twenty-nine being non-union members. (T, p. 43) Further, he stated that the school operates on a full-time basis a minimum of five days per week, and in the past it has held classes on Saturdays if there was a demand. (T, p. 22) In total, there

are 8 full-time instructors: Iron Mountain has one, Wayne has four, and the Perry site has three. (T, p. 23)

Mr. Coleman testified that students have had no problems with receiving college credits for courses taken at Petitioner's facilities. (T, p. 26) In particular, students can receive up to sixty-four credits toward a degree at Baker College for courses that are offered at MLTAI. *Id.* A similar agreement once existed with Lake Superior State University where courses taken at MLTAI received credit toward an associate's degree; however, it has ended because of financial constraints on Lake Superior State University. (T, p. 27) Mr. Coleman also asserted that courses offered by MTAI, though having different titles, are similar to courses offered at many colleges. *Id.* Additionally, Mr. Coleman testified that petitioner has renewed its agreement with the American Council on Education (Exhibit 9), which has credit recommendations for laborers. *Id.* However, Mr. Coleman was uncertain how many students have taken advantage of the opportunity to receive college credits for the classes offered. (T, p. 45)

Mr. Coleman testified that the classes are comprised of hands-on exercises, group exercises, and individual exercises depending on the courses. (T, p. 30; 35) Most of the hands-on work and training come from the Institute's participation in community projects. (T, p. 36) Mr. Coleman testified that while students work on projects they receive an expense reimbursement. "[A]nyone that attends a course will receive what is called a stipend." (T, p. 52) The stipend at Iron Mountain was approximately $45 to $50 per day. *Id.*

Mr. Coleman asserted that upon completing the training program students receive a certification and are prepared to take a third-party state exam that prepares them to obtain a state license. (T, p. 34) Mr. Coleman also testified that after graduating from the program students can earn $22 to $25 an hour plus a fringe-benefit package. (T, p. 38)

Mr. Daryl Keith Gallant the Assistant Director of Training, is an Instructor, and he also maintains the premises. He testified that part of his job requirement is to improve the program and he also mentors the new instructors. (T, p. 66) Additionally, Mr. Gallant testified that he is currently upgrading and expanding several of the courses. (T, p. 67) He has attended several College courses and that they are similar to the courses taught at Petitioner's institute. (T, p. 68) He further testified that he has a Bachelor's degree from National Labor College of George Menay, which is located in Silver Spring, Maryland. (T, p. 70) He stated that "many of the courses that [he] was granted credit for at the National Labor College [he has] taken at the Michigan Laborer's Training & Apprenticeship Institute." *Id.* Furthermore, he has "been accepted to Western Michigan University's Master's program in career and technical training and they didn't have any problem accepting credits from National Labor College's transcripts." (T, p. 73)

Mr. Dale Alessandrini , is a Manager and Instructor at Michigan Laborers' Training at the Iron Mountain Site. He testified that he teaches 98% of the courses taught at the Iron Mountain facility. (T, p. 76) He also testified that the hands-on portion of the class requires working with several community programs. (T, p. 81) This is part of the students' training. (T, p83) Several of these programs are aimed at revitalizing impoverished neighborhoods, working with a church, working with veterans, working with Habitat for Humanity, etc. (T, p. 81-82, 84) He also testified that if a student lives less than 60 miles away from the facility they receive less than $275 weekly; if they live more than 60 miles away then they get paid over $300 a week. (T, p. 88) Additionally, Mr. Alessandrini testified that if there is a shortage of space, non-union and

union students get the same treatment and neither receives a preference. (T, p. 89) Thus, whoever registers first is allowed to take the class.

Mr. Scott McDonald the Director of Apprenticeship at Michigan Laborers' Training testified that the Apprentice Program was approved in 1997. (T, p. 91) He also testified that he has been building the program with the help of Dave Jackson and Glen Bivens, who work at the Department of Labor Office of Apprenticeship. *Id.* He sits on the Michigan Apprenticeship Steering Committee Board with both men, and with their help he continues to make the necessary changes to improve the program. (T, p. 91- 92) Mr. McDonald also testified that the program has a very expensive and rigorous testing process, which they use to select their apprentices; it is similar to an entrance examination. (T, p. 93- 94) Petitioner uses a third-party examiner to ensure objectivity in the selection of the students; it tests includes motor skills, hand-eye coordination-type exams, and each student is interviewed. (T, p94)

After the best students are chosen they are encouraged to take classes at Petitioner's facilities. (T, p95) While in the program, Petitioner tries to place the apprentice in a job with a union employer. *Id.* A union employer is used because it is not affiliated with any other employers. *Id.* The Apprenticeship Program is broken into four incremental stages requiring 1000 hours each section. *Id.* In order to complete each increment students have to complete 1000 hours of work, and 100 hours in the classroom. (T, p96) Thus, it takes 4000 hours and 400 classroom training hours to complete the apprenticeship program, after which the apprentices are issued an U.S. Department of Labor Bureau of Apprenticeship and Training completion certificate. *Id.*

Mr. McDonald also testified that he received a degree from Baker College and he met the requirements by obtaining journeyman status as a construction craft laborer. He took the

required courses through Baker College, a total of seven actual courses. (T, p97) Baker College gave him 72 credits from the courses he took while at Petitioner's facility. (T, p98) Mr. McDonald also testifies that many of the courses offered in the Apprentice program are also offered at colleges and universities across the state. *Id.*

In order to be a journeyman, apprentices need to work several hours with an employer. (T, p. 103-104) Because union employers are the only employers with whom Petitioner has a relationship, they are the only employers trusted to validate the hours that are actually worked by the apprentices. *Id.* Mr. McDonald testified that the version of Exhibit 12 being used is an outdated and incorrect version of the Standards of Apprenticeship, and despite Exhibit 12 stating otherwise, Petitioner "does not restrict anybody from being employed by anyone. (T, p106) [MLTAF] can only restrict them from being involved in the apprenticeship program." *Id.* Additionally, he testified that at a conservative estimate of 38 students have availed themselves of the opportunity to get a degree from Baker College. (T, p107-108) Mr. McDonald estimated that about seven thousand apprentices have passed through the program. *Id.*

RESPONDENT'S BRIEF

The following exhibits were included as part of Respondent's Brief:

1. Financial Statements for the Michigan Laborers' Training & Apprenticeship Fund for the year ending August 31, 2004;
2. Michigan Laborers' Training & Apprenticeship Fund Internal Revenue Service Return Form 990,
3. The Agreement maintained between Michigan Laborers' Training and Apprenticeship Fund and Lake Superior State University which was determined;

4. The Articulation Agreement between Michigan Laborers' Training and Apprenticeship;
5. Materials printed from the website of Michigan Laborers' Training and Apprenticeship Institute;
6. Michigan Laborers' Training & Apprenticeship Fund Amended and Restated Agreement and Declaration of Trust dated February 25, 2005;
7. Letter from Department of Treasury Internal Revenue Service of January 18, 1974;
8. Petition to Board of Review dated March 13, 2003;
9. Response by Board of Review denying exemption;
10. Pages 79, 130 and 207 – 209 from the yellow pages of the 2005-2006 Yellow Book for Escanaba/Iron Mountain/Manistique with regard to education organizations, labor organizations and schools;
11. Pages 54, 76 and 77 from the yellow pages of the 2006 Niagara Telephone Company/Borderland Communications Wisconsin –Michigan Directory with regard to labor organizations and schools;
12. Pages 86, 129 and 130 from the yellow pages of 2006 AT&T Iron Mountain/Kingsford/Iron River/ Crystal Falls Directory with regard to labor organizations and schools;
13. Printouts from Yellowpages.com directory for labor organizations, schools-business & vocational, school-vocational and schools-industrial, technical & Trade;
14. Printouts from Yellowpagecity.com directory for labor organizations;

15. The American Council on Education College Credit Recommendation Service providing credit recommendations for courses taken through the Laborers-AGC;
16. The printout of all non-union members trained at the Iron Mountain facility from January 1, 2004 through July 5,2005; and
17. The printout of all union members trained at the Iron Mountain facility from January 1, 2004 through July 5, 2005.

A. Respondent's Legal Argument

"MCL 211.7n exempts real and personal property from taxation, when that property is owned and occupied by a nonprofit educational institution incorporated under the laws of this state, if the building and property are used solely for the purpose for which the institution was incorporated." (Respondent's Hearing Brief, hereinafter referred to as "Respondent's Brief," p. 1) Since MCL 211.7n exempts the Petitioner from paying taxes, Petitioner has "an unequal removal of the burden all landowners have to share equally in support of local government, it must be strictly construed." *Lake Louise Christianity Community v Hudson Township*, 10 Mich App 573; 159 NW2d 849 (1968). (Respondent's Brief, p. 2)

Respondent asserts the following:

1. Petitioner claims to be a trust fund, not a corporation.
2. Petitioner claims it was organized exclusively for educational purposes within the meaning of the Section 501(c)(3) of the Internal Revenue Code.
3. Petitioner claims it is an "education institution" as that term is defined by Section 170(b)(1)(A) of the Internal Revenue Code.
4. Petitioner claims it is exempt from having to pay federal income tax pursuant to Section 501(c)(3) if the Internal Revenue Code.

Respondent stated that accepting petitioner's entire claim as true its property is not exempt from taxation. (Respondent's Brief, p 8).

Respondent argued that a plain reading of MCL 211.7n indicates that it is unambiguous; an entity claiming its real or personal property is exempt from taxation because it is an educational institution must be incorporated. (Respondent's brief, p. 3) Further, Respondent stated that:

> Pursuant to MCL 211.7n, the real and personal property of nonprofit organizations organized under the laws of the State of Michigan is exempt, if the nonprofit organization is devoted exclusively to the development of literature, music, painting or sculpture, which substantially enhances the cultural environment of the community as a whole, if the real or personal property is available to the public on a regular basis and the property is occupied solely for the purposes for which the organization was operated. *Id.*

Respondent argued that "Petitioner does not claim that it has devoted its property to the development of literature, music, painting or sculpture and it is not incorporated." *Id.* The legislature chose not to extend a tax exemption to all organizations, including trusts, formed under the law of the State of Michigan. *Id.* Additionally, Petitioner's assertion that its income is exempt because of it nonprofit status under Section 501(c)(3) of the Internal Code has no bearing on it meeting the requirement of MCL 211.7n. *Id.*

In response to Petitioner's use of the *Dolan's* case, Respondent stated that the party seeking the exemption in the Dolan case was a corporation, and the case specifically stated that one of its requirements was that the claimant must be incorporated. (Respondent's Response to Petitioner's Hearing Brief, hereinafter referred to as "Respondent's response," p 1) Respondent also challenged the use of the Calvin College case, stating that it is an unpublished case, has no legal significance, and no precedential effect under the rules of stare decisis. *Id.* Additionally, Respondent disputed Petitioner's contention that *Calvin College* indicated that an entity seeking a tax exemption be a corporation under MCL 211.7n, was ruled unconstitutional in *Chauncey*

and Marion Deering McCormick Foundation v Wawatan Township, 186 Mich App 411; 4645 NW2d 12 (1991)." (Respondent's Response, p. 2)

Imposing a requirement that the corporation had to be organized and incorporated under the laws of the State of Michigan is unconstitutional. *Id.* Respondent stated that in *Calvin College*, the statute was found unconstitutional because it treated a corporation that was organized under the laws of Michigan differently than it did an out-of-state corporation. *Id.* The difference in treatment violated the Equal Protection Clause of the Constitution. *Id.* Respondent contended that this was confirmed in *Chauncey and Marion Deering McCormick*, when the court indicated that the Tax Tribunal was wrong when it denied Petitioner a tax exempt status simply because it was not incorporated in the state. *Id.* Thus, "the statute was not found to be unconstitutional for the legislature to allow only corporations to receive an exemption."

Respondent opposed Petitioners assertion that Petitioner's situation is similar to that of *Dolan Drive Corporation*. (Respondent's Response to Petitioner's Post Hearing Brief, hereinafter referred to as "Respondent's Response to Post Hearing Brief," p. 1) Respondent contended that the Tribunal required Petitioner in the *Dolan Drive Corporation* to be a corporate entity. *Id.* Respondent also stated that there is no evidence to indicate that the Michigan Department of Education contributed any funds to Petitioner's training program as it did to the *Dolan Drive Corporation.* (Respondent's Response to Post Hearing Brief, p. 4) Additionally, the salaries of the instructors who train the apprentices are not paid by the Michigan Department of Education and "Petitioner's facility does not fill a void left by the termination of state funding for an apprentice program." *Id.* Moreover, Respondent contended that "[t]he State of Michigan is not required by federal law or the United States Department of Labor to provide any training to apprentices or journey men laborers." *Id.*

Respondent contended that the fact that "very few students have taken advantage of agreements with Baker College and Lake Superior University is very relevant." *Id.* Respondent stated that this indicates that Petitioner has not met its burden in proving that the facility contributes substantially to relieving the burden of the government.

Respondent contended that though Petitioner is determined to be a non-profit organization status under Section 501(c)(3) or an educational institution under the Internal Revenue Code, it has no bearing on deciding if it meets the requirements of MCL 211.7n. *Id.* Respondent asserted that the state tax exemption is much narrower in scope than the federal tax exemption statute. *Id.* Respondent asserted that "[t]he federal government doesn't require a taxpayer to substantially reduce the educational burden of the United states government, before it is determined to be a tax exempt educational institution." (Respondent's Response to Post Hearing Brief, p. 4-5) Lastly, Respondent stated that Petitioner's institution is not available to the general public, and that Petitioner has not indicated that the Legislative Scheme of for education mandates the vocational training that Petitioner provides. (Respondent's Response to Post Hearing Brief, p. 5)

FINDINGS OF FACTS

Petitioner, Michigan Laborers' Training & Apprenticeship Fund, formally known as the Michigan laborers District Council Training and Education Fund, was established on March 22, 1972. Petitioner is an irrevocable trust whose members include the Michigan Laborers' District Council of the Laborers' International Union of North America, The Associated General Contractors of America Greater Detroit Chapter, Inc., the Michigan Chapter of the Associated General Contractors of America, Inc., Labor Relations Division, the Michigan Infrastructure and

Transportation Association and the Construction Association of Michigan. (P1) Petitioner is not incorporated.

As stated in Petitioner's Trust Agreement, Petitioner's purpose is to hold and administer the fund "for the purpose of defraying costs of training apprentices, and upgrading and retraining journeymen working under the jurisdiction of the collective bargaining agreement(s) which created said Fund." (P1, p4) Petitioner is exempt from Federal income tax as a 501(c)(3) organization and is an organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code. (P2) Petitioner asserts that has a sales and use tax exemption from the State of Michigan; however, because Petitioner did not provide documentary evidence in support of this assertion, the Tribunal will not make this finding.

The subject property is known as Parcel Nos. 2202-132-019 and 2202-132-008 (real property), and Parcel No. 2202-900-027 (personal property), and is classified as commercial property. The subject property consists of numerous buildings, storage facilities and an adjacent parking lot. The tax years under appeal are the 2004, 2005 and 2006 tax years. During those years, Petitioner owned and occupied the subject property. The subject property is assessed by the Township of Breitung, but is known as being located in Iron Mountain, Michigan. Petitioner also owns facilities in Perry, Michigan, and Wayne, Michigan.

Petitioner has an apprenticeship program that includes hours of diverse work and training.

1. Petitioner provides training that includes classroom and hands-on-training, both in school and in the field, with the students being classified as journeymen upon completion of the training.
2. Petitioner provides training for craft laborers.

3. Petitioner also provides for the retraining of Journeymen.

4. The MLTAI has an Articulation agreement with Baker College and courses taken at the Institute are given college credit toward a degree from Baker College.

5. MLTAI previously had an agreement with Lake Superior State University where students who graduated from its program were able to receive credits toward an associate's degree.

CONCLUSIONS OF LAW

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.

In the instant case, Petitioner asserts that the subject property is exempt from property taxes because Petitioner is an educational institution. Educational institutions have been recognized as an exempt class. Because Petitioner is attempting to establish membership in that class, the preponderance of evidence standard applies.

The exemption for educational and scientific institutions is found in MCL 211.7n, which states, in pertinent part:

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

In *Engineering Society of Detroit v Detroit*, 308 Mich 539; 14 NW2d 79 (1944), the Michigan Supreme Court set forth the following four-part test to utilize when determining whether a claimant seeking a tax exemption qualifies for a property tax exemption.

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

(2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution[2];

(3) The claimant must have been incorporated under the laws of this State;

(4) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated. *Id*., p550.

In this case, the parties agree that Petitioner meets the first requirement. The parties' disagree, however, as to whether Petitioner is an educational institution and whether Petitioner is required to be incorporated as stated in the third part of the test and in MCL 211.7n. Respondent asserts that Petitioner must be incorporated; Petitioner asserts that it need not be incorporated and that it is enough that it is a nonprofit institution.

Relying on *Wexford Medical Group v City of Cadillac,* 474 Mich 192; 713 NW2d 734 (2006), Petitioner argues that because the requirement to be incorporated in Michigan was held unconstitutional, it is not required to be incorporated. After discussing the four-part test established in *Engineering Society, supra*, and the 1980 amendments to the GPTA, the *Wexford* Court stated: "Because the Legislation did not retain language requiring in-state incorporation, we remove factor three." *Id*., p203.

Petitioner also relies on *Calvin College v City of Grand Rapids*, unpublished opinion per curiam of the Court of Appeals, decided October 4, 2005, (Docket No. 262258), wherein the court held: "The third requirement has since been found unconstitutional. Thus, a claimant must establish only the remaining three requirements." *Id*. Petitioner argues that this language could

[2] Prior to 1980, MCL 211.7 contained the exemption for property owned and occupied by a nonprofit theater, library, benevolent, charitable, educational and scientific institutions. In 1980, the General Property Tax Act was rewritten as it pertains to these exemptions. The exemption for charitable institutions is now found in MCL 211.7o, while the exemption for educational and scientific institutions is found in MCL 211.7n.

not be any clearer. "The court did not say the third factor is still applicable to corporations, both domestic and foreign, **it removed it**." (Emphasis in original.) (Petitioner's Post Hearing Brief, p6)

While it cannot be denied that the courts made these statements, the Tribunal respectfully disagrees with Petitioner's interpretation. The petitioners in both *Wexford* and *Calvin College* were nonprofit corporations. As such, the courts were not required to address the specific issue presented in this case. Importantly, because the petitioners were incorporated, neither court was required to address the requirement that the claimant occupy the property solely for the purposes "for which it was incorporated."

The question of whether a nonprofit educational institution must be *incorporated* to qualify for an exemption under MCL 211.7n is one of first impression. On the other hand, it is well-settled that an institution may not be required to be incorporated **in a specific state** to qualify for a property tax exemption. In *WHYY v Glassboro*, 393 US 117, 89 S Ct 286; 21 L Ed 2d 242 (1968), the United States Supreme Court stated:

> This Court has consistently held that while a State may impose conditions on the entry of foreign corporations to do business in the State, once it has permitted them to enter, "the adopted corporations are entitled to equal protection with the state's own corporate progency, at least to the extent that their property is entitled to an equally favorable ad valorem tax basis." *Id*., p119.

In determining that the appellant did not receive equal protection, the Court held that "the inequality is not because of the slightest difference in (New Jersey's) relation to the decisive transaction, but *solely because of the different residence of the owner*." (Emphasis added.) *Id*. p120. In other words, the United States Supreme Court held that the appellant was denied equal protection solely because it was incorporated in a different state, not because of its status as a corporation. In fact, there is no dispute that a state may provide different tax exemptions for

different types of legal entities. For example, in Michigan, a principal residence property tax exemption may be granted to an individual per MCL 211.7cc, while a qualified agricultural property tax exemption may be granted to an individual, a corporation, a limited liability company, etc., per MCL 211.7ee.

In Michigan, the requirement that a nonprofit institution be incorporated in this state was first held unconstitutional in *American Youth Foundation v Township of Benona*, 37 Mich App 722; 195 NW2d 304 (1972). In that case, the court stated:

> In a prior appearance before this Court, plaintiff unsuccessfully urged tax-exempt status. Since that decision the Supreme Court of the United States has held that denying tax-exempt status to an otherwise qualified institution because it is incorporated in another state violates the Fourteenth Amendment of the United States Constitution. (Citation omitted.) (*Id*., p724)

In *American Youth*, the defendant did not object to the trial court's application of the holding in *WHYY* to Michigan's exemption statute, MCL 211.7[3]; instead, the defendant argued that, because this particular provision of the statute was unconstitutional, the entire exemption was unconstitutional. In other words, the defendant argued that the exemption should not be granted to *any* nonprofit corporation, domestic or foreign. Plaintiff, on the other hand, requested that the court maintain the exemption and strike only the offending language, specifically "incorporated under the laws of this state." *Id*., p724. The court, agreeing with the plaintiff, held:

> The Michigan Legislature directs us to apply the following rule of construction regarding severability unless such construction would be "inconsistent with the manifest intent of the legislature":
>
> > "If any portion of an act or the application thereof to any person or circumstances shall be found to be invalid by a court, Such invalidity shall not affect the remaining portions or applications of the act which can be given effect without the invalid portion or application, provided such remaining

[3] As previously discussed, this exemption statute was rewritten in 1980.

> portions are not determined by the court to be inoperable, and to this end acts are declared to be severable." MCLA §8.5; MSA §2.216.

> The clear and express intention of the Legislature was to exempt *Domestic, nonprofit corporations* from taxation. Such a clear expression can be upheld by this Court. Those portions of the statutes in question which remain after severing the 'domestic corporation' proviso are still operable and can still implement the intent manifested by the Legislature. (Emphasis added.) *Id*., pp724-725.

Eighteen years later, in *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp,* 186 Mich App 511; 465 NW2d 14 (1990), the Court of Appeals heard yet another appeal involving this same issue. In that case:

> The tribunal ruled that petitioner was not entitled to an exemption because it was not incorporated in Michigan. However, a panel of this Court in *American Youth Foundation v Benona Twp*, 37 Mich App 722; 195 NW2d 304 (1972), lv den 387 Mich 782 (1972), held that the portion of MCL § 211.7; MSA§ 7.7 (now MCL § 211.7 *o ;* MSA § 7.7 [4- *l*]) which denied tax exempt status on the basis of *out-of-state* incorporation was unconstitutional because it denied equal protection of the law to an *otherwise qualified corporation* on the *basis of its incorporation in a foreign state*. In reaching this conclusion, the Court relied upon *WHYY, Inc v Glassboro,* 393 US 117, 89 S Ct 286, 21 L Ed 2d 242 (1968), in which the United States Supreme Court held that a state may not deny an otherwise qualified out-of-state institution tax exempt status *because it was incorporated in another state*. The Supreme Court ruled that such action violated the Equal Protection Clause of the Fourteenth Amendment, U.S. Const., Am. XIV. *Id.* See also OAG, 1985-1986, No. 6385, p. 364 (September 12, 1986). (Citations omitted.) (Emphasis added.) *Id*., pp514-515.

It is clear that the holdings in these cases indicate that the unconstitutional language is limited to references such as "out-of-state," "foreign state," "another state," "domestic," and "under the laws of this state."

As the court stated in *American Youth*, "[t]he clear and express intention of the Legislature was to exempt *Domestic, nonprofit corporations* from taxation." (Emphasis added.) *Id*., p725. To insure that the Legislature's intention is fulfilled, while insuring that the statute is constitutional, the only change that must be made to the statute is to delete any requirement that the corporation be organized *in Michigan*.

Moreover, strict application of the holding of *WHYY* to Michigan's exemption statutes results in only the invalid or unconstitutional language being stricken, specifically "under the laws of this state." It is not necessary to strike the requirement that the business be "incorporated" to achieve a constitutional statute. Furthermore, the Tribunal finds that preserving the word "incorporated" does not render the remaining statutory language inoperable, nor is such construction inconsistent with the manifest intent of the legislature. See MCL 8.5.

In spite of the fact that *WHYY* was issued in 1968, and *American Youth* was issued in 1972, the Legislature's 1981 amendment to MCL 211.7n did not eliminate the unconstitutional language, namely that the nonprofit theater, library, educational or scientific institution be incorporated "*under the laws of this state*. . . ." Instead, the Legislature added an additional exemption for institutions "devoted exclusively to fostering the development of literature, music, painting, or sculpture," "*organized under the laws of this state*. . . ." (Emphasis added.) *Id*. In doing so, it is clear that the legislature recognized the difference between an institution that is "incorporated" and one that is "organized." If the legislature had intended nonprofit theater, library, educational or scientific institutions be merely "organized," this change could have been made at that time.

Even if this interpretation is later found to be incorrect, the fact that the *Wexford* Court did not invalidate the fourth part of the test established in *Engineering Society, supra,* that being the requirement that "the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated," cannot be ignored. It goes without saying that if an institution is not incorporated, it cannot occupy its property in accordance with the statute.

In *Calvin College, supra,* the court dealt with a property tax exemption claim under both MCL 211.7o and MCL 211.7n. In that case, the court stated: "One of the requirements for an exemption under MCL 211.7n is that the property be 'occupied by the claimant solely for the purposes for which it was incorporated.'" *Id*. Thus, the *Calvin College* court also recognized that the fourth part of the test has not been invalidated or held unconstitutional.

The Tribunal's finding that the fourth part of the *Engineering Society* test is still required is supported by the Legislature's 1996 amendment to MCL 211.7o. Prior to the amendment, the statute read, in pertinent part:

> Real estate or personal property owned and occupied by nonprofit charitable institutions **incorporated under the laws of this state** with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated. . . . (Emphasis added.)

After the 1996 amendment, the statute read, in pertinent part:

> Property owned 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. (Emphasis added.)

Thus, while the amendment eliminated the requirement that the charitable institution be incorporated in this state, the Legislature maintained the requirement that the property be occupied solely for the purposes for which the institution *was incorporated*. This was recognized in *Grosse Pointe Academy v Township of Grosse Pointe*, unpublished opinion per curiam of the Court of Appeals, decided November 2, 2004 (Docket No. 248340). In restating the requirements of MCL 211.7n, the court stated:

> Petitioner must meet three criteria to qualify for an exemption under §7n: (1) the real estate must be owned and occupied by the exemption claimant, (2) the exemption claimant must be a nonprofit educational institution, and (3) the property must be occupied by the claimant solely for the purposes for which the institution was incorporated. *Id*., citing *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944).

The court did not specifically address the provision of MCL 211.7n that requires the institution to be "incorporated under the laws of this state." However, later in its opinion the court cited *Webb Academy v Grand Rapids*, 209 Mich 523; 177 NW 290 (1920). "Exemption does not follow from the mere fact of ownership by one of the institutions named, but is based on and only applies to ownership combined with **occupation for the purposes of its incorporation**." (Emphasis added.) *Id*. In doing so, the court recognized that this requirement has not changed or been eliminated. For this reason, the Tribunal finds that because Petitioner is not incorporated it does not qualify for an exemption under MCL 211.7n.

"Since the Legislature has not defined the term 'educational' as they appear in these statutes, it is our primary duty to interpret these phrases and glean the Legislature's intent." *Michigan Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985) (MUCC). In interpreting the term "educational," the *MUCC* Court cited *Ladies Literary Club* and stated that, "[s]omething more than serving the public interest is required to bring one claiming an exemption as an educational institution within the goals and policies affording a tax exemption." *Michigan Conservation Clubs*, Supra 668.

The MUCC court also cited *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 727 (1948), and indicated that it "determined that an institution seeking an educational exemption must fit into the general scheme of education provided by this state and supported by public taxation." The court further stated that that the proposition was refined in *David Walcott Kendall Memorial School v Grand Rapids*, where the court "declared that an educational exemption may be available to an institution otherwise within the exemption definition, if the

institution makes a substantial contribution to the relief of the burden of government." *David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968).

In *Calvin College v City of Grand Rapids*, unpublished opinion per curiam of the Court of Appeals, decided October 4, 2005, (Docket No. 262258), the court was asked to apply the *Ladies Literary Club* test even though the parties agreed that the petitioner was an educational institution. The respondent argued that

> … the MTT erred by failing to apply an additional, two-part test addressing whether the Prince Center lodging facility (1) fits into the general scheme of education provided by the state and supported by public taxation and (2) contributes substantially to the relief of the educational burden of government. *Calvin College, supra*.

In response, the court stated:

> It is apparent from *Ladies Literary Club*, however, that these additional criteria apply only in determining whether an organization qualifies as an educational institution to satisfy the second requirement of the three-part *Engineering Society of Detroit* test. The Court in *Ladies Literary Club* was not concerned with whether the premises at issue were used solely for the purposes for which the organization was incorporated. Rather, it addressed the club's activities and whether the activities could be considered as being sponsored by an educational institution. *Ladies Literary Club, supra* at 755-756. Thus, the additional criteria apply only to such an inquiry.

Because the dispute exists that Petitioner here is an educational institution, the additional two-prong test announced in *Ladies Literary Club* is applicable. *Calvin College, supra*.

Here, Petitioner has a vocational school that specializes in training Apprentices and Journeymen. Earlier decisions held that some specialized schools did not qualify for exemptions as an educational institution because the curriculum they offered did not fit the general scheme of education then. *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 737 (1948). Nonetheless, the court later found that the general scheme of education in Michigan had changed

significantly and recognized that a specialized school should be exempt from property tax. *David Walcott Kendall Memorial School v Grand Rapids* 11 Mich App 231; 160 NW2d 778 (1968). However, in *Association of Little Friends, Inc v City of Excanaba*, 138 Mich App 302 (1984), it was determined that vocational training did not fit into the general scheme of education. Thus, meeting the requirements of a tax exempt status as a vocational school or a specialized school is not always given, but it has been granted.

1. **Petitioner's education, training and retraining programs does not fit into the general scheme of education provided by the state, and supported by public taxation.**

Petitioner argued that it meets the first part of the test because it provides an opportunity to students to have a career as a construction craft laborer, and indicates its similarity to the *Dolan Drive Corporation v Mt. Morris Township*. (Petitioner's Post hearing brief, p. 12) Petitioner's stated that the purpose of the trust was to defray costs of pre-vocational and vocational training, upgrading and retraining. (Petitioner's Property Tax Appeal Petition Form, Exhibit 2) Respondent opposed Petitioner's contentions and stated that the Petitioner did not establish that the Legislature's scheme for education mandates vocational training or training individuals to become apprentices or journeymen. (Respondent's Response to Post Hearing Brief, p. 5)

Here, Petitioner relied heavily on the *Dolan Drive Corporation* case. However, unlike Petitioner in *Dolan Drive Corporation*, it was unable to specifically indicate a statute that mandates the type of education it provides. (*see* Petitioner's Property Tax Appeal Petition Form, Exhibit 2) Furthermore, the statute that Petitioner in *Dolan Drive Corporation* relied on, namely, MCL 380.1287 has since been repealed. *Id.* Petitioner asserts the institution provides students with an opportunity to have a career. (Petitioner's Post hearing brief, p. 12) However,

that can be said for many post-secondary institutions that provide training or retraining for different skills. Nevertheless, in order for these institutions program to fit into the general scheme provided by the state and supported by Public taxation, Petitioner has to indicate the specific intent on the state's part to provide or fund a similar program like the one provided by Petitioner. This is evident if Petitioner indicates a statute or government funding that allows for similar training as Petitioner provides. Petitioner has not asserted, nor provided any evidence that the training or retraining it offers fits into the general scheme of education, nor has it asserted any provision that indicates that its training is supported by public taxation.

Petitioner contends that it offers many courses that are similar to courses taught in colleges and universities. (T, p. 68) Additionally, Petitioner in the past had an agreement with Lake Superior State University where students who had received credits were able to transfer them to its University. (Petitioner's Brief, p. 2) Currently it has an agreement with Baker College who accepts credits from students who have attended Petitioner's institution. (T, p. 26) Though it is a factor to consider, this by itself is not conclusive. Furthermore, there are no figures to indicate the amount of student that has taken advantage of this agreement. The information submitted has been speculative. Hence, for these reasons the training that was provided by Petitioner does not fit into the general scheme of education nor was it supported by public taxation.

2. Petitioner's institution does not contribute substantially to the relief of the educational burden of government.

Petitioner stated that its institution offers an extensive education and training programs for Apprentices and Journeymen. (T, p. 19) The total amount of students in the facility is three hundred and eighty-six; approximately twenty to twenty-nine are non-union participants that

were trained between September 1, 2005 and August 31, 2006. Petitioner was however unable to specifically indicate how many students took advantage of its articulation agreement. (Petitioner's Post Hearing Brief p. 9) Additionally, Petitioner stated that it cannot compel students to avail themselves of the opportunity. *Id.* Respondent countered and stated that Petitioner's institution is not available to the general public. (Respondent's Response to Post Hearing Brief, p. 5)

The Kendall School of design had an enrollment amount of three hundred and twenty-five which the court deemed conferred substantial contribution to the state's educational effort, and it qualified for property tax Exemption. *Kendall,* 11 Mich App at 234. Here, Petitioner has many vocational courses for training and retraining thousands of students. Additionally, Petitioner's program is open to the public. However, Petitioner has failed to indicate how it has relieved the government of its burden.

Petitioner relies heavily on the Dolan Case. However, Petitioner in the *Dolan* case in its inception received funding and had its teachers' salaries paid by the Michigan Department of Education. This clearly indicated that the government was relieving its burden of providing these training skills through Petitioner in the *Dolan* case. Additionally, it indicates the government intention to provide the program. Here there are no facts to indicate that this program has ever been supported or funded by the government. Thus, Petitioner did not indicate that it reliefs the educational burden of the government.

JUDGMENT

IT IS ORDERED that Petitioner's request for a Tax Exemption under MCL 211.7n is DENIED.
IT IS FURTHER ORDERED that the subject property's true cash, state equalized, assessed and taxable values for the 2004, 2005 and 2006 tax years are as set forth herein.

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

MICHIGAN TAX TRIBUNAL

Patricia L. Halm

Entered: April 7, 2011