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

MICHIGAN CO-TENANCY
LABORATORY/TRINITY HEALTH, et al,
Petitioner,

v

MTT Docket No. 326791

PITTSFIELD TOWNSHIP,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

OPINION AND JUDGMENT

This case involves Petitioner's claim that medical laboratory testing equipment located in Pittsfield Township, county of Washtenaw is exempt from ad valorem taxation. Jeffrey A. Hyman, Attorney, represented Petitioner. R. Bruce Laidlaw, Attorney, represented Respondent. The hearing was held on September 19, 2011. Both Petitioner and Respondent filed "Post-Hearing Briefs" on October 12, 2011.

On June 11, 2011, the Tribunal ruled on the issue of jurisdiction. As noted, per MCR 2.116(C)(4), the Tribunal finds that it does have jurisdiction in the present case.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did prove by a preponderance of the evidence that it is a charitable organization pursuant to MCL 211.9(1)(a) and MCL 211.7o. As such, the subject personal property is exempt from ad valorem property taxes.

PETITIONER'S CONTENTIONS

Petitioner contends that the subject equipment is personal property owned directly by the 30 Petitioner hospitals as tenants-in-common, with each hospital owning an undivided interest in each item of equipment. Each of the Petitioner hospitals is a non-profit charitable institution. Therefore, Petitioner contends that the personal property is exempt from taxation under MCL 211.9(1)(a) for the 2006, 2007, 2008, 2009, 2010 and 2011 tax years "regardless of how the equipment is used." (Petitioner's Brief, p 49)[1]

Petitioner further contends that the increased utilization of the subject equipment to perform testing for Warde reduces the cost per test of the hospital co-tenants' own testing. Moreover, the great majority of utilization of the equipment (approximately 90%) is for testing for hospital co-tenants, and the relatively small utilization of the equipment (10%) for testing for Warde is performed only on the excess capacity of the equipment not otherwise being used for hospital co-tenant testing. The equipment therefore satisfies the "solely" requirement of, and is also exempt under MCL 211.7o(1).

PETITIONER'S ADMITTED EXHIBITS

P-1. Asset Purchase Agreement and Bill of Sale dated October 1, 1997.

P-2. Inventory and Appraisal of Laboratory and Office Equipment dated March 14, 1997.

P-3. Co-Tenancy and Operating Agreement and Amendments dated October 1, 1997.

P-4. October 1, 1997 Supplemental Agreement.

P-5. Warde Partnership Agreement dated December 26, 1985.

P-6. Lease Agreement dated October 1, 1997.

[1] The Tribunal is offended by Petitioner's blatant disregard of the Court Rules (see MCR 2.119(2)) which limits briefs to 20 pages. However, because the Tribunal did not specifically order the parties to follow the Court Rules, Petitioner's post hearing brief has been reviewed in its entirety.

P-7. Professional and Managerial Services Agreement dated October 1, 1997.

P-8. Co-Tenancy Professional and Managerial Services Agreement dated January 1, 2005.

P-9. Services Agreement dated October 1, 1997.

P-10. List of Hospital Owners, Admission Dates and Ownership Ratios, December 31, 2005 to 2010.

P-11. MCL and WML Utilization Percent (Allocated Expense-Esoteric Testing) for each fiscal year since 1998.

P-12. 501(c)(3) Determination Letter covering Trinity Health-Michigan Hospitals dated June, 2002.

P-13. Trinity Health-Michigan (*f/k/a Mercy Health Services*) Articles of Non-Profit Incorporation dated July 19, 1976.

P-14. Trinity Health-Michigan (*f/k/a Mercy Health Services*) IRS Publication 78.

P-15. Trinity Health-Michigan (*f/k/a Mercy Health Services*) GuideStar.org Report.

P-16. Trinity Health-Michigan (*f/k/a Mercy Health Services*) Form 990.

P-17. St. Joseph Mercy Health System (Assumed Name filed under Trinity Health-Michigan).

P-18. St. Mary's Mercy Medical Center (Assumed Name filed under Trinity Health-Michigan).

P-19. Mercy General Health Partners (Assumed Name filed under Trinity Health-Michigan).

P-20. St. Joseph Mercy Port Huron (Assumed Name filed under Trinity Health-Michigan).

P-21. St. Joseph Mercy Oakland (Assumed Name filed under Trinity Health-Michigan).

P-22. St. Mary Mercy Hospital (Assumed Name filed under Trinity Health-Michigan).

P-23. St. Mary Hospital of Livonia, Co-Tenancy and Operating Agreement; Bill of Sale dated March 30, 1999.

P-24. St. Mary Hospital of Livonia, Articles of Nonprofit Incorporation dated January 19, 1953.

P-25. St. Mary Hospital of Livonia, GuideStar.org Report.

P-26. St. Mary Hospital of Livonia, Form 990.

P-27. Battle Creek Health System Co-Tenancy and Operating Agreement; Bill of Sale dated January 1, 2005.

P-28. Battle Creek Health System, Articles of Nonprofit Incorporation dated November 20, 1987.

P-29. Battle Creek Health System, IRS Publication 78.

P-30. Battle Creek Health System, GuideStar.org Report.

P-31. Battle Creek Health System, Form 990.

P-32. Henry Ford Macomb Hospital Corporation (*f/k/a Mercy Mount Clemens Corporation*) Articles of Nonprofit Incorporation dated June 18, 1990.

P-33. Henry Ford Macomb Hospital Corporation (*f/k/a Mercy Mount Clemens Corporation*) IRS Publication 78.

P-34. Henry Ford Macomb Hospital Corporation (*f/k/a Mercy Mount Clemens Corporation*) GuideStar.org Report.

P-35. Henry Ford Macomb Hospital Corporation (*f/k/a Mercy Mount Clemens Corporation*) Form 990.

P-36. Henry Ford Macomb Hospital – Warren Campus (*Assumed name of Henry Ford Macomb Hospital Corporation*).

P-37. Henry Ford Wyandotte Hospital, Articles of Nonprofit Incorporation dated December 18, 1987.

P-38. Henry Ford Wyandotte Hospital, IRS Publication 78.

P-39. Henry Ford Wyandotte Hospital, GuideStar.org Report.

P-40. Henry Ford Wyandotte Hospital, Form 990.

P-41. Holy Cross Hospital, Co-Tenancy and Operating Agreement; Bill of Sale dated January 1, 2005.

P-42. Holy Cross Hospital, Articles of Nonprofit Incorporation dated June 24, 1959.

P-43. Blue Cross Hospital, IRS Publication 78.

P-44. Holy Cross Hospital, GuideStar.org Report.

P-45. Blue Cross Hospital, Form 990.

P-46. Mt. Carmel Health System, Co-Tenancy and Operating Agreement; Bill of Sale dated October 1, 2001.

P-47. Mt. Carmel Health System, Articles of Nonprofit Incorporation dated June 30, 1995.

P-48. Mt. Carmel Health System, GuideStar.org Report.

P-49. Mt. Carmel Health System, Form 990.

P-50. Metropolitan Hospital Co-Tenancy and Operating Agreement; Bill of Sale dated July 1, 2002.

P-51. Metropolitan Hospital Articles of Nonprofit Incorporation dated October 13, 1941.

P-52. Metropolitan Hospital IRS Publication 78.

P-53. Metropolitan Hospital GuideStar.org Report.

P-54. Metropolitan Hospital Form 990.

P-55. Covenant Healthcare (*Assumed name filed under Covenant Medical Center, Inc.*) Co-Tenancy and Operating Agreement; Bill of Sale dated July 1, 2003.

P-56. Covenant Healthcare (*Assumed name filed under Covenant Medical Center, Inc.*) Articles of Nonprofit Incorporation dated September 8, 1997.

P-57. Covenant Healthcare (*Assumed name filed under Covenant Medical Center, Inc.*) IRS Publication 78.

P-58. Covenant Healthcare (*Assumed name filed under Covenant Medical Center, Inc.*) GuideStar.org Report.

P-59. Covenant Healthcare (*Assumed name filed under Covenant Medical Center, Inc.*) Form 990.

P-60. Mercy Medical Center (Covenant Healthcare (*Assumed name filed under Catholic Health Initiates – Iowa, Corp.*) Co-Tenancy and Operating Agreement; Bill of Sale dated January 1, 2002.

P-61. Mercy Medical Center (Covenant Healthcare (*Assumed name filed under Catholic Health Initiates – Iowa, Corp.*) Articles of Nonprofit Incorporation dated December 16, 1965.

P-62. Mercy Medical Center (Covenant Healthcare (*Assumed name filed under Catholic Health Initiates – Iowa, Corp.*) GuideStar.org Report.

P-63. Mercy Medical Center (Covenant Healthcare (*Assumed name filed under Catholic Health Initiates – Iowa, Corp.*) Form 990.

P-64. Garden City Osteopathic (*Assumed name filed under Garden City Hospital*) dated January 1, 2002.

P-65. Garden City Osteopathic (*Assumed name filed under Garden City Hospital*) Articles of Nonprofit Incorporation dated March 17, 1947.

P-66. Garden City Osteopathic (*Assumed name filed under Garden City Hospital*) IRS Publication 78.

P-67. Garden City Osteopathic (*Assumed name filed under Garden City Hospital*) GuideStar.org Report.

P-68. Garden City Osteopathic (*Assumed name filed under Garden City Hospital*) Form 990.

P-69. Hurley Medical Center Co-Tenancy and Operating Agreement; Bill of Sale dated April 1, 2004.

P-70. Hurley Medical Center, Nonprofit Municipal Ownership.

P-71. Hurley Medical Center IRS Publication 78

P-72. Hurley Medical Center GuideStar.org Report.

P-73. Hurley Medical Center Form 990.

P-74. St. John Health System (*Assumed name filed under St. John Health*) Articles of Nonprofit Incorporation dated August 23, 1978.

P-75. St. John Health System (*Assumed name filed under St. John Health*) IRS Publication 78.

P-76. St. John Health System (*Assumed name filed under St. John Health*) GuideStar.org Report.

P-77. St. John Health System (*Assumed name filed under St. John Health*) Form 990.

P-78. Providence Hospital and Medical Centers Co-Tenancy and Operating Agreement; Bill of Sale dated July 1, 2001.

P-79. Providence Hospital and Medical Centers Articles of Nonprofit Incorporation dated January 3, 1923.

P-80. Providence Hospital and Medical Centers GuideStar.org Report.

P-81. Providence Hospital and Medical Centers Form 990.

P-82. W.A. Foote Memorial Hospital Co-Tenancy and Operating Agreement, Bill of Sale dated April 1, 2000.

P-83. W.A. Foote Memorial Hospital Articles of Nonprofit Incorporation dated November 13, 1970.

P-84. W.A. Foote Memorial Hospital IRS Publication 78.

P-85. W.A. Foote Memorial Hospital GuideStar.org Report.

P-86. W.A. Foote Memorial Hospital Form 990.

P-87. Marquette General Health System (*Assumed name filed under Marquette General Hospital, Inc.*) Co-Tenancy and Operating Agreement; Bill of Sale dated April 1, 2004.

P-88. Marquette General Health System (*Assumed name filed under Marquette General Hospital, Inc.*) Articles of Nonprofit Incorporation dated October 6, 1897.

P-89. Marquette General Health System (*Assumed name filed under Marquette General Hospital, Inc.*) IRS Publication 78.

P-90. Marquette General Health System (*Assumed name filed under Marquette General Hospital, Inc.*) GuideStar.org Report.

P-91. Marquette General Health System (*Assumed name filed under Marquette General Hospital, Inc.*) Form 990.

P-92. Oakwood Healthcare System Co-Tenancy and Operating Agreement; Bill of Sale dated January 1, 2000.

P-93. Oakwood Healthcare System Articles of Nonprofit Incorporation dated December 9, 1948.

P-94. Oakwood Healthcare System IRS Publication 78.

P-95. Oakwood Healthcare System GuideStar.org Report.

P-96. Oakwood Healthcare System Form 990.

P-97. Henry Ford Health System Co-Tenancy and Operating Agreement; Bill of Sale dated April 1, 1999.

P-98. Henry Ford Health System Articles of Nonprofit Incorporation dated September 8, 1915.

P-99. Henry Ford Health System IRS Publication 78.

P-100. Henry Ford Health System GuideStar.org Report.

P-101. Henry Ford Health System Form 990.

P-102. Henry Ford West Bloomfield Hospital (*Assumed name of Henry Ford Health System*)

P-103. Henry Ford Hospital (*Assumed name of Henry Ford Health System*)

P-104. Mercy Memorial Hospital System (*Assumed name filed under Mercy Memorial Hospital Corporation*) Co-Tenancy and Operating Agreement; Bill of Sale dated January 1, 2008.

P-105. Mercy Memorial Hospital System (*Assumed name filed under Mercy Memorial Hospital Corporation*) Articles of Nonprofit Incorporation dated May 27, 1971.

P-106. Mercy Memorial Hospital System (*Assumed name filed under Mercy Memorial Hospital Corporation*) IRS Publication 78.

P-107. Mercy Memorial Hospital System (*Assumed name filed under Mercy Memorial Hospital Corporation*) GuideStar.org Report.

P-108. Mercy Memorial Hospital System (*Assumed name filed under Mercy Memorial Hospital Corporation*) Form 990.

P-109. North East Alabama Regional Medical Center (*Assumed name filed under Regional Medical Center Board*) Co-Tenancy and Operating Agreement; Bill of Sale dated January 1, 2008.

P-110. North East Alabama Regional Medical Center (*Assumed name filed under Regional Medical Center Board*) Articles of Nonprofit Incorporation dated May 14, 1974.

P-111. North East Alabama Regional Medical Center (*Assumed name filed under Regional Medical Center Board*) IRS Publication 78.

P-112. North East Alabama Regional Medical Center (*Assumed name filed under Regional Medical Center Board*) GuideStar.org Report.

P-113. North East Alabama Regional Medical Center (*Assumed name filed under Regional Medical Center Board*) Form 990.

P-114. Ochsner Clinic Foundation Co-Tenancy and Operating Agreement; Bill of Sale dated October 1, 2010.

P-115. Ochsner Clinic Foundation Articles of Nonprofit Incorporation dated January 21, 1944.

P-116. Ochsner Clinic Foundation IRS Publication 78.

P-117. Ochsner Clinic Foundation GuideStar.org Report.

P-118. Ochsner Clinic Foundation Form 990.

P-119. Pontiac Osteopathic Hospital Co-Tenancy and Operating Agreement; Bill of Sale dated April 1, 2000.

P-120. Pontiac Osteopathic Hospital Articles of Nonprofit Incorporation dated January 16, 1952.

P-121. Pontiac Osteopathic Hospital IRS Publication 78.

P-122. Pontiac Osteopathic Hospital GuideStar.org Report.

P-123. Pontiac Osteopathic Hospital Form 990.

P-124. Port Huron Hospital Co-Tenancy and Operating Agreement; Bill of Sale dated July 1, 1998.

P-125. Port Huron Hospital Articles of Nonprofit Incorporation dated January 20, 1880.

P-126. Port Huron Hospital IRS Publication 78.

P-127. Port Huron Hospital GuideStar.org. Report.

P-128. Port Huron Hospital Form 990.

P-129. The Health Care Authority for Baptist Health Co-Tenancy and Operating Agreement; Bill of Sale dated July 1, 2008.

P-130. The Health Care Authority for Baptist Health Articles of Nonprofit Incorporation dated July 1, 2005.

P-131. The Health Care Authority for Baptist Health IRS Publication 78.

P-132. The Health Care Authority for Baptist Health GuideStar.org Report.

P-133. The Health Care Authority for Baptist Health Form 990.

P-134. Valley Baptist Hospital Holdings Co-Tenancy and Operating Agreement; Bill of Sale dated October 1, 2009.

P-135. Valley Baptist Hospital Holdings Articles of Nonprofit Incorporation dated August 11, 2006.

P-136. Valley Baptist Hospital Holdings IRS Publication 78.

P-137. Valley Baptist Hospital Holdings GuideStar.org Report.

P-138. Valley Baptist Hospital Holdings Form 990.

P-139. West Virginia United Health System Co-Tenancy and Operating Agreement; Bill of Sale dated April 1, 2004.

P-140. West Virginia United Health System Articles of Nonprofit Incorporation dated November 22, 1996.

P-141. West Virginia United Health System IRS Publication 78.

P-142. West Virginia United Health System GuideStar.org Report.

P-143. West Virginia United Health System Form 990.

P-144. Asset List (December 31, 2005).

P-145. Asset List (December 31, 2006).

P-146. Asset List (December 31, 2007).

P-147. Asset List (December 31, 2008).

P-148. Asset List (December 31, 2009).

P-149. Asset List (December 31, 2010).

P-150. MCL & Warde Lab Consolidated Income Statement and Balance Sheet (Fiscal Year ending 6/30/05).

P-151. MCL & Warde Lab Consolidated Income Statement and Balance Sheet (Fiscal Year ending 6/30/06).

P-152. MCL & Warde Lab Consolidated Income Statement and Balance Sheet (Fiscal Year ending 6/30/07).

P-153. MCL & Warde Lab Consolidated Income Statement and Balance Sheet (Fiscal Year ending 6/30/08).

P-154. MCL & Warde Lab Consolidated Income Statement and Balance Sheet (Fiscal Years ending 6/30/09 and 6/30/10).

P-155. 2008 Personal Property Statement.

P-156. 2009 Personal Property Statement.

P-157. 2010 Personal Property Statement.

P-158. 2011 Personal Property Statement.

P-159. December 8, 2009 State Tax Commission Letter.

P-160. 2006 Board of Review Appeal.

P-161. Building Lease Agreement dated September 5, 2003.

P-162. MCL and WML Website.

P-163. Warde Form 1065 (Fiscal Year Ending June 30, 2006).

P-164. Warde Form 1065 (Fiscal Year Ending June 30, 2007).

P-165. Warde Form 1065 (Fiscal Year Ending June 30, 2008).

P-166. Warde Form 1065 (Fiscal Year Ending June 30, 2009).

P-167. Warde Form 1065 (Fiscal Year Ending June 30, 2010).

P-170. Review of Selected Entity Classification and Partnership Tax Issues (Joint Committee on Taxation) dated April 8, 1997.

P-171. Edwards, Ellis, Armstrong & Company, PC, Accounting Firm Website.

PETITIONER'S WITNESS

Stephen Zawacki, chief financial officer, Michigan Co-Tenancy Laboratory, was Petitioner's sole witness. In addition to supporting the admission of the 169 exhibits presented by Petitioner, Mr. Zawacki further testified that (i) "the subject medical testing laboratory in this case was established in 1985 by Frances Warde Medical Laboratory, a Michigan partnership owned two-thirds by Trinity Health-Michigan and one-third by Laboratory Associates of Michigan, Inc." (TR, Volume 1, p 22), (ii) on October 1, 1997, seven of the Petitioner hospitals jointly purchased all of the assets of the subject laboratory from Warde for $1,014,161, which

equaled the appraised fair market value of the assets. The seven purchasing hospitals were all Trinity hospitals that had formerly been clients of and purchased testing services from Warde. (TR, Volume 1, p 24), (iii) since the hospitals acquired the laboratory assets from Warde in October, 1997, additional items of equipment have been purchased for and installed at the laboratory. Every single item of such subsequently acquired equipment is owned by and was acquired with funds belonging to the co-tenant hospitals. (TR, Volume 1, pp 28-29), (iv) the hospitals acquired, own and operate the laboratory assets as tenants-in-common, with each hospital co-tenant directly owning an undivided ownership interest in each laboratory asset (TR, Volume 1, p 36), (v) each item of the subject equipment has a tag attached to it that says "Michigan Co-Tenancy Laboratory" (TR, Volume 1, p 105), (vi) the hospital co-tenants own the laboratory equipment directly as tenants-in-common. The Michigan Co-Tenancy Laboratory is not incorporated, and there is no intervening legal entity (such as a corporation, partnership or limited liability company) between the laboratory assets and the hospital co-tenants. (TR, Volume 1, p 36), (vii) the Michigan Co-Tenancy Laboratory is merely a contractual relationship among the hospital co-tenants. (TR, Volume 2, p 24), (viii) each hospital co-tenant's percentage ownership interest in each laboratory asset corresponds to the hospital co-tenant's utilization of the laboratory assets to perform its testing compared to the utilization of the laboratory assets by the other hospital co-tenants to perform their testing. Each hospital co-tenant pays an amount equal to the cost of the medical tests performed for it, plus a proportionate share of overhead and other common costs. The co-tenancy is a cost sharing arrangement, with no mark-up or profit element in the medical tests performed for the hospital co-tenants. (TR, Volume 1, p 39), (ix) each hospital co-tenant has a charity care policy whereby persons unable to afford the cost of

health care are provided the care for free or at a reduced cost. (TR, Volume 1, p 49), (x) each hospital co-tenant also has an open access policy whereby any person who comes to the hospital for care is admitted and provided the care; no one is ever denied care because of inability to pay or because of race, color, religion, national origin or other such criteria. (TR, Volume 1, p 49), (xi) the Co-Tenancy and Operating Agreement requires that each hospital co-tenant be exempt from federal income tax under IRC section 501(c)(3). (TR, Volume 1, p 48), (xii) in the process of admitting a hospital co-tenant to the Michigan Co-Tenancy Laboratory, due diligence is conducted to ensure that the hospital co-tenant is in fact a 501(c)(3) organization (and that it in fact operates non-profit health care facilities organized and operated exclusively for charitable purposes), (TR, Volume 1, p 49), (xiii) because the hospital co-tenants leased to Warde only the right to use the excess capacity of the laboratory equipment, Warde can only use the equipment when, if and to the extent the equipment is not being used to perform testing for the hospital co-tenants. (TR, Volume 1, p 50), (xiv) since the hospital co-tenants acquired the laboratory in October 1997, testing for the hospital co-tenants has been given priority over testing for Warde, and there has never been a situation where a test for a hospital co-tenant was delayed in order to perform a test for Warde. (TR, Volume 1, p 59), (xv) there is no separate space within the subject laboratory where only Warde testing is performed (TR, Volume 1, p 85); (xvi) there is a sign outside the subject laboratory entitled “Warde Medical Laboratory” but that does not signify that the partnership Frances Warde Medical laboratory has any continuing ownership interest in the subject laboratory equipment. (TR, Volume 1, p 54); (xvii) there is a single website for Michigan Co-Tenancy Laboratory and Warde, although there is a separate log-in capability to obtain proprietary information available only to the hospital co-tenants (TR, Volume 1, p 76).

PETITIONER'S ARGUMENTS

Petitioner contends that the subject medical testing laboratory equipment is personal property that is exempt from taxation under MCL 211.9(1)(a), which provides that:

> (1) The following personal property . . . is exempt from taxation:
>
> (a) "The personal property of charitable, educational, and scientific institutions incorporated under the laws of this state."

Petitioner articulates that the exemption for personal property of a charitable institution under MCL 211.9(1)(a) does not impose any requirement relating to use of the property. MCL 211.9(1)(a) exempts all personal property of charitable institutions incorporated in Michigan, regardless of how the property is used. (Petitioner's Brief, p 27)

The laboratory equipment also qualifies for the separate independent exemption under MCL 211.7o(1), which provides that:

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

The charitable institution exemption under MCL 211.7o(1) is subject to an additional limitation not found in the MCL 211.9(1)(a) charitable institution personal property tax exemption. The MCL 211.7o(1) exemption applies to a charitable institution's property only "while occupied by that non-profit charitable institution solely for the purposes for which that non-profit charitable institution was incorporated . . .". MCL 211.7o(1). Petitioner contends, "this occupancy or use limitation does not apply to the separate and distinct charitable institution personal exemption under MCL 211.9(1)(a)." (Petitioner's Brief, p 28).

Petitioner asserts the use of the equipment in this case satisfies the "solely" requirement of MCL 211.7o(1) as applied by the Courts and the Tax Tribunal. The equipment has been used primarily for the hospital co-tenants' own testing. The testing for Warde is subordinate and incidental to the needs of the co-tenants' testing. Even if the "solely" requirement of MCL 211.7o(1) applies, and even if this requirement is not satisfied, the rule of apportionment must be applied to exempt the utilization percentage of the equipment for the hospital co-tenants' own testing.

Petitioner's documentary and testimonial evidence clearly shows that the hospital co-tenants own the subject laboratory equipment. Proofs include the October 1, 1997 Asset Purchase Agreement and Bill of Sale (Petitioner's Exhibit P-1, Petitioner's Brief – Exhibit J). All subsequent equipment acquisitions were made by hospital co-tenants with their own funds. Warde made no equipment acquisitions with its funds. All financial statements and tax returns reflect that all of the laboratory equipment is owned by the hospital co-tenants. The partnership Frances Warde Medical Laboratory does not own any equipment. The lease agreement allows Warde to use the excess capacity of the equipment as a lessee. Building signage and websites referring to Warde Medical Laboratory does not signify any ownership by Warde. "This does not undermine the binding legal documentation which incontrovertibly establishes ownership in the hospital co-tenants." (Petitioner's Brief, p 30).

Petitioner further contends that Respondent's assertion that the lease agreement between the hospital co-tenants' and Warde is not arm's length is without merit. The five percent mark-up fee charged to Warde is not excessive. Moreover, this mark-up fee did not result in any reduction in Warde's profit margins. Warde's profit margin changed during the tax years at

issue because of under-pricing and nonpayment by certain clients. There is no provision in the lease agreement for Warde to purchase laboratory equipment. For accounting purposes, the laboratory equipment is owned by the co-tenant hospitals and not by Warde. "Binding contractual documents, conveying ownership of property and prescribing parties' relative interests in the property, will not and cannot be disregarded due to accounting conventions." (Petitioner's Brief, p 31).

The hospital co-tenants directly own the laboratory equipment as tenants-in-common, with each of the hospital co-tenants owning an undivided interest in each item of the equipment. Petitioner supports this contention with an executed copy of the Co-Tenancy and Operating Agreement (Petitioner's Brief, Exhibit K) and an established definition of the term "tenancy-in-common" (Petitioner's Brief, Exhibit M).

Petitioner takes exception to Respondent's contention that the Michigan Co-Tenancy Laboratory is a taxable entity and is required to file its own separate federal tax return and that the Michigan Co-Tenancy Laboratory is separate and apart from the hospital co-tenants. Petitioner states, ". . . that an unincorporated arrangement (such as the Michigan Co-Tenancy Laboratory) is classified as a separate taxable entity for federal tax purposes only if the participants affirmatively elect such treatment." (Petitioner's Brief, p 32). The hospital co-tenants have filed federal tax returns since the co-tenancy was formed in October, 1997. The IRS has not challenged or audited this treatment in the past 13 years.

Even if the Michigan Co-Tenancy Laboratory was deemed a separate entity for tax purposes, the laboratory equipment is still owned directly by the hospital co-tenants. "Federal tax law treatment does not predetermine Michigan property tax law treatment." (Petitioner's

Brief, p 33). The hospital owners direct and undivided ownership interest conveyed to them by binding contractual documents is not precluded by a label of a de facto separate entity. Further, the hospital co-tenants have an elected Administrative Committee with control and ownership over the Michigan Co-Tenancy Laboratory. See *Ann Arbor v The University Cellar, Inc,* 401 Mich 279, 301; 258 NW2d 1 (1977); *National Music Camp v Green Lake Township,* 76 Mich App 608; 257 NW2d 188 (1997).

Petitioner claims it has fulfilled the tests set forth in *Wexford Medical Group v Cadillac,* 474 Mich at 215 NW2d 734 (2006). Each hospital co-tenant is a non-profit charitable institution.

The joint ownership by multiple charitable institutions must be granted an exemption under the rationale of *Hospital Purchasing Service of Michigan v Cadillac,* 11 Mich App 500; 161 NW2d 759 (1968) (Petitioner's Brief, Exhibit C). This case involves seventy non-profit charitable hospitals that formed and became members of a non-profit corporation to purchase hospital supplies in bulk. "The motivation for the collaborative effort in *Hospital Purchasing Service* was the same as in the present case: to reduce the cost of acquiring items used in providing hospital services through economies of scale." (Petitioner's Brief, p 36).

Respondent's claims that *Hospital Purchasing Service* involves a corporation owned by the subject hospitals and services only the subject hospitals is also in error. On the contrary, there were a significant number of for-profit non-member hospitals that purchased supplies through *Hospital Purchasing Service*. (Petitioner's Brief, p 37 and Exhibit C). Petitioner cites various *Hospital Purchasing Service* cases to emphasize the relationship between non-profit and for-profit hospitals in tax obligations (Petitioner's Brief, Exhibits D, E, F and G).

Petitioner indicates that there are notable similarities between *Hospital Purchasing Service* and the present case. *Hospital Purchasing Service* serves for-profit hospitals with a larger for-profit component (16-20%) than the present case (10%).

> As in the present case, moreover, the for-profit and non-profit components of the *Hospital Purchasing Service* business are conducted by the same personnel, with the same equipment, and at the same location. Like the present case, furthermore, the *Hospital Purchasing Service* appears to solicit business from for-profit, non-member hospitals to achieve enhanced economies of scale, and it has a single website. (Petitioner's Brief, p 38).

Petitioner also contends that in the present case, the for-profit enterprise is conducted by a separate entity – Warde. The for-profit and non-profit components in *Hospital Purchasing Service* are conducted by the same single non-profit corporation. This distinction makes the present case a stronger candidate for exemption.

Petitioner further argues that Respondent's attempt to distinguish the present case from *Hospital Purchasing Service* regarding ownership of the laboratory equipment is not noteworthy. In *Hospital Purchasing Service* the non-profit hospitals were structured in the form of a non-profit corporation. The direct ownership of the property by the non-profit charitable hospitals in the present case is a stronger argument for the exemption.

Petitioner cites two Tax Tribunal decisions where the non-profit purchasing corporation in *Hospital Purchasing Service* is not exempt from the federal income tax under IRC section 501(c)(3). *Hospital Purchasing Service of Michigan v Department of Treasury* (Michigan Tax Tribunal, Docket No. 339542) and *Hospital Purchasing Service of Michigan v Thornapple Township* (Michigan Tax Tribunal, Docket No. 318903). ". . . there is a separate non-profit corporation in the *Hospital Purchasing Service* case whose property has been held to be exempt from property tax, notwithstanding that the non-profit corporation is not exempt from federal

income tax under IRC section 501(c)(3). This certainly undermines Respondent's (and its accountant's) analysis." (Petitioner's Brief, p 40).

The laboratory equipment is used "solely" for charitable purposes. The hospital co-tenants are non-profit charitable institutions that own the laboratory testing equipment. The Courts and the Tribunal have held that the "solely" requirement is satisfied when the non-exempt use of the property is subordinate and incidental to the primary use, which is for the exempt purposes of the owner. In the present case, the lease of the excess capacity of the subject equipment to Warde occurs when the exempt owners are not otherwise using the property for exempt purposes.

Petitioner cites several cases to support the exemption of equipment used "solely" for charitable purposes. *Webb Academy v Grand Rapids*, 209 Mich 523; 177 NW 290 (1920), is on point.

Also, in *Saginaw County Agricultural Society v Saginaw*, 142 Mich App 173; 368 NW2d 878 (1984), the Court of Appeals considered an exemption for property used "exclusively" for fair purposes claimed by an agricultural society. The Court of Appeals held that this non-fair use was incidental to the exempt fair use; the property is used "exclusively" for fair purposes.

The Court of Appeals reached the same conclusion in the case of *American Legion Memorial Home Association of Grand Rapids v Grand Rapids*, 118 Mich App 700; 325 NW2d 543 (1982). This case involved property owned by incorporated memorial homes of world war veterans. The Court of Appeals held that the memorial home was exempt even though many non-veteran organizations used the property for social functions.

The Tax Tribunal's decision in *Calvin College v Grand Rapids* (MTT Docket No. 300547) (Petitioner's Brief, Exhibit N) further applied the term "solely" in an exemption appeal.

Therefore, Petitioner contends that because the majority of the utilization of the subject laboratory testing equipment is for the hospital co-tenants, "The primary use of the laboratory equipment is for testing for the hospital co-tenants and, therefore, the 'solely' requirement of MCL 211.7o(1) is satisfied in this case." (Petitioner's Brief, p 43).

Even if the testing for Warde caused the equipment not to be used "solely" for the exempt purposes of the hospital co-tenants, Petitioner contends that an apportionment rule applies to the majority of laboratory testing conducted by the hospital co-tenants. The Court of Appeals adopted and applied the apportionment rule in two cases. In *Hospital Purchasing Service*, *supra*, the ". . . unrelated non-exempt use of a portion of the building by the Secretary of State merely renders that portion of the building taxable, and that remaining portion of the building used for the exempt purpose of purchasing hospital supplies in bulk is exempt." (Petitioner's Brief, p 44). In *McFarlan Home v Flint*, 105 Mich App 728; 307 NW2d 712 (1981), a non-profit corporation operated an elderly womens home. In addition, the non-profit corporation operated an unrelated museum on the property. In this case, Petitioner is entitled to exemption for that part of the property used solely for the elderly womens home.

In the present case, testing for the hospital co-tenants and testing for Warde are performed in the same building. However, there is a specific delineation between the non-profit hospital co-tenants laboratory testing and the excess capacity testing for Warde.

Finally, Respondent's assertion that nothing changed between the hospital co-tenants and Warde since October, 1997, is without merit. Respondent's arguments are not relevant to the statutory requirements for exemption.

> All that is required for the personal property tax exemption under MCL 211.9(1)(a) is ownership of the property by a charitable institution. All that is required under the MCL 211.7o(1) exemption is ownership of the property by a non-profit charitable institution and use of the property solely for the charitable purposes for which it was incorporated. (Petitioner's Brief, p 47).

The statutory exemption provisions do not deny an exemption to a non-profit charitable institution based on the acquisition of personal property from a for-profit entity. Further, the Legislature has established exemptions for charitable institutions and non-profit charitable institutions. "Charitable institutions are permitted to structure their affairs so as to take advantage of the tax exemption granted them by the Legislature." (Petitioner's Brief, p 49).

RESPONDENT'S CONTENTIONS

Respondent contends that taxes were assessed to Warde Medical Laboratory, not to Petitioners. Warde Medical Laboratory is the owner of the property, not Petitioners. Warde Medical Laboratory uses the property in connection with a business for profit. Petitioners did not file a timely appeal of the assessments. The operating agreement created the Michigan Co-Tenancy and acts as a hospital cooperative. "Such cooperatives can be recognized as exempt under federal tax law, but in this case Michigan Co-Tenancy could not be recognized under federal tax laws because it does not use its property to the extent that it owns property solely for servicing the non-profit hospitals." (TR, Volume 1, p 17). Petitioner's bill of sale transferring the ownership of the personal property is a matter of form without substance. Applicable

accounting principles support the contention that Warde Medical Laboratory owns the personal property. The operating agreement allows Warde Medical Laboratory to use the excess capacity of the equipment for commercial purposes. This excess capacity is undefined; the operating agreement does not require any limitation upon Warde's use of the testing equipment.

RESPONDENT'S ADMITTED EXHIBITS

R-1. Warde Medical Lab Website dated July 22, 2011.

R-2. Articles of Incorporation of Laboratory Associates of Michigan, Inc., dated December 19, 1985.

R-3. Laboratory Associates of Michigan, Inc. 2011 Profit Corporation Update.

R-4. Articles of Incorporation of Michigan Multispecialty Physicians, PC dated December 16, 1988.

R-5. Michigan Multispecialty Physicians, PC 2009 Profit Corporation Update.

R-6. Michigan Multispecialty Physicians, PC assumed name for Pathology and Laboratory Management Associates.

R-7. Biographical Background of Paul Valenstein, M.D.

R-8. Memorandum prepared by David W. Armstrong, C.P.A.

RESPONDENT'S WITNESSES

David Armstrong, certified public accountant, testified that (i) an extensive number of Petitioner's exhibits were reviewed (TR, Volume 1, pp 110-111); (ii) the Internal Revenue Code and IRS regulations were researched (TR, Volume 1, p 112); (iii) Financial Accounting Standard Board documents and the Federal Tax Coordinator were reviewed (TR, Volume 1, pp 112-113); (iv) the IRC 501(e) ". . . is on point for the facts in this case." (TR, Volume 1, p 113); (v) the four tests under IRC 501(e) are: patronage dividends, voting procedures, subordination of capital, and a common goal/purpose that an organization needs to meet in order to be tax exempt (TR, Volume 1, pp 114-120); (vi) if MCL meets the criteria as a de facto cooperative and qualify for 501(c)(3) status is to first qualify under 501(e) (TR, Volume 1, p 121); (vii) to qualify for the 501(e) exemption Petitioner would have to file an IRS 1023 Form (TR, Volume 1, p 121); (viii) ". . . this group of hospitals that have banded together and are deemed called Michigan Co-Tenancy Lab, is, in fact, an association, which under the Internal Revenue code is a form of a corporation, although in this case it's unincorporated." (TR, Volume 1, p 124); (ix) "In my opinion they're a de facto cooperative association and that they should be filing a specific tax return to report their income separately to the IRS." (TR, Volume 1, p 125); (x) ". . . what I partly wanted to look at to see whether or not we were dealing with an arm's length relationship is look at the tax returns, look at the partnership agreement, and see whether or not – and the lease agreement between Warde and ultimately Michigan Co-Tenancy Laboratory, and determine whether or not provisions are being properly followed…" (TR, Volume 1, pp 126-127); (xi) "So my opinion is that under generally accepted accouting principles, of which Warde is required to file – or, required to comply by, that the lease should be treated as a capital lease

from Warde's perspective, and thereby should be on its books." (TR, Volume 1, p 136); (xii) "And from a substance over form perspective, that there are significant factors that cause one to believe that this is not an arm's length agreement and that the substance of the transaction needs to prevail over the form." (TR, Volume 1, p 136); (xiii) "So, I feel under both criteria under the accounting standards that the equipment should really be reported by Warde." (TR, Volume 1, p 137)

Paul N. Valenstein, M.D., testified that (i) he is a pathologist, a specialist physician; (ii) he is the chief operating officer for the Michigan Co-Tenancy Laboratory; (iii) Warde has two specific functions: to sell excess testing capacity to for-profit hospitals and a ministerial function in signing contracts on behalf of the hospital co-tenants (TR, Volume 2, pp 29-30); (iv) "The initial professional corporation that provided professional medical and laboratory management services under contract to the hospital co-tenants and to Warde was a company called Pathology and Laboratory Management Associates (PLMA)." (TR, Volume 2, p 17); (v) in 2005, PLMA merged into Michigan Multispecialty Physicians (MMP), a professional corporation; (vi) "The laboratory management services provided by PLMA and MMP include implementing a quality control system at the laboratory and overseeing the computer system." (TR, Volume 2, pp 14-16); (vii) PLMA and MMP perform their professional medical and laboratory management services solely on a contract basis, and neither firm (nor any employee or shareholder of either firm) has any ownership interest in the laboratory equipment." (TR, Volume 2, p 22); (viii) there is no separate personnel, testing equipment, building space or signage for the co-tenant hospitals and Warde; (ix) "There is a clear distinction between work that is performed for the co-tenant owners and it is tabulated separately from excess capacity that is leased to the Warde

partnership." ". . . It's all kept separate and it's reported on a quarterly basis to the owners." (TR, Volume 2, pp 30 and 32).

RESPONDENT'S ARGUMENT

Petitioner is claiming personal property exemption under MCL 211.7o.[2] Respondent contends "The only relevant subsections are subsections (1) and (2). The subsections are as follows and must be strictly construed and no exemption may be found by implication." (Respondent's Brief, p 7).

> (1) Real or personal property owned and occupied by a non-profit charitable institution while occupied by that non-profit charitable institution solely for the purposes for which that non-profit charitable institution was incorporated is exempt from the collection of taxes under this act.
>
> (2) Real or personal property owned and occupied by a charitable trust while occupied by that charitable trust solely for the charitable purposes for which that charitable trust was established is exempt from the collection of taxes under this act.

Respondent contends that substance prevails over form in the present case. Respondent cites *City of Ann Arbor v University Cellar, Inc,* 65 Mich App 512, 518; 237 NW2d 535, 538 (1975), reversed on other grounds 401 Mich 279, 258 NW2d 1 (1977). "We believe that the reasoning of these cases, which looks to the factual substance of the arrangement rather than its form to determine the real owner of the property, can also be applied to the personal property tax exemption." Respondent also cites *Baker v City of Ann Arbor,* 395 Mich 151, 154; 235 NW2d 322, 324 (1975).

[2] Although Petitioner's primary exemption contention relies on MCL 211.9(1)(a), Respondent fails to acknowledge or respond to Petitioner's contention regarding this statutory provision in its "Post-Hearing Brief."

> We are not concerned with whether the arrangement benefits or advances the essential functioning of the Hospital. We look only to whether or not the doctors are carrying on a business for profit. If they are, under the terms of the statute they are subject to tax for the use of otherwise exempt property in connection therewith.

Respondent contends the personal property taxes were properly assessed to Warde. "The facts established at trial are subject to multiple interpretations, but none of them lead to the conclusion that the personal property is exempt from taxation." (Respondent's Brief, p 8). A substance over form interpretation is necessary. Warde was the same institution after the October 1, 1997 paperwork with Trinity Health. The sale and leaseback arrangement is interpreted as Warde as owner of the personal property under accepted accounting standards. Testing services were provided to for-profit and non-profit institutions.

Petitioner contends a significant change was that Warde would pay Trinity a 5% profit factor for medical testing. Trinity eliminated cost mark-ups and taxes. Trinity sold property rights for a modest fee to other hospitals. "Thus, Warde becomes the testing laboratory of choice for hospitals in Michigan and from as far away as Louisiana." (Respondent's Brief, p 9).

Petitioners contend that another change in the use of the commercial property is that the "members" have priority testing. However, the operating agreement does not set a limit for the excess capacity. There are no instances where commercial testing was prevented due to the unavailability of testing equipment.

Respondent asserts Warde is the same commercial laboratory with the same equipment and testing services. "There is nothing in the Warde partnership agreement that purports to make it a charitable institution. So its property is not exempt under MCL 211.7o." (Respondent's Brief, p 9).

Petitioner's arrangement can be interpreted as a hospital cooperative. Respondent's witness, Mr. Armstrong, testified that there is a federal exemption for hospital cooperatives. Petitioner's hospital arrangement is a de facto hospital cooperative. There is a specific set of guidelines for the non-profit hospitals to provide testing services. In *Hospital Purchasing Service of Michigan v City of Hastings, supra,* plaintiff was a non-profit corporation with hospital membership qualified under IRC Section 501(c)(3). In the present case, there is nothing in the Co-Tenancy and Operating Agreement which creates limits on the activities of Michigan Co-Tenancy Laboratory. The operating agreement includes commercial services.

Respondent claims Petitioner hospitals are not exempt even if they are considered to be the owners of the personal property. The personal property is not owned and occupied solely for the charitable purpose under MCL 211.7o. "The Co-Tenancy and Operating Agreement specifically contemplates that the property will be used for business purposes. It has been used to generate revenue of $34,169,344.00." (Respondent's Brief, p 10). There is no limit or restriction on the commercial testing involving the personnel, equipment or building area. Petitioner contends that the personal property is used for a charitable purpose with a cost effective basis. Petitioner relies on *Hospital Purchasing Service of Michigan v City of Hastings, supra*, as precedent for the finding of an exemption.

The courts have indicated that the word "solely" does not mean exclusively. Incidental uses (based on limited time and area) do not detract from the exempt purpose of the personal property. See *Webb Academy v City of Grand Rapids, supra,* and *Saginaw County Agricultural Society v City of Saginaw, supra*. In the present case, the business use of the personal property is not incidental; the profits paid to the hospitals is an attractive arrangement for membership.

The exemption claimant must occupy the property in addition to using the property for an exempt purpose. See *Liberty Hill Housing Corporation v City of Livonia*, 480 Mich 44, 62; 746 NW2d 282, 292 (2008). "By no stretch of the imagination, can it be said that Petitioners from as far away as Louisiana had a regular physical presence in the laboratory." (Respondent's Brief, p 11).

Respondent intends to preserve jurisdictional and procedural issues raised in its summary disposition motions. Warde is the party assessed for the taxes. All Warde had to do was assert that it owned no personal property to invoke the Tribunal's jurisdiction. Further, Warde could have selected Petitioners as its agent to make the appeal. "As it followed neither procedure the appeal should have been dismissed." (Respondent's Brief, p 12) See *Walgreen Corporation v Macomb Township,* 280 Mich App 58; 760 NW2d 594 (2008). "Also, none of the parties now named as Petitioners filed its appeal to the Tribunal before the statutory deadline. That omission is jurisdictional." (Respondent's Brief, p 12). See *Electronic Data Systems Corporation v Township of Flint*, 253 Mich App 538; 656 NW2d 215 (2002).

In conclusion, attempting to reduce hospital costs is laudable. However, statutory requirements are necessary for an exemption. Petitioners could have established a cooperative under *Hospital Purchasing Service, supra*. Instead, Petitioners have used property for commercial purposes with benefits to a charitable institution. Granting this exemption would imply a new standard in violation of the rules of strict construction. "But under none of those interpretations can the property be considered exempt." (Respondent's Brief, p 13).

FINDINGS OF FACT

1. The subject medical testing laboratory was established in 1985 by Frances Warde Medical Laboratory, a Michigan partnership with two-thirds ownership by Trinity Health Michigan and one-third ownership by Laboratory Associates of Michigan, Inc.
2. The subject medical testing facility was originally located at 5025 Venture Drive in Ann Arbor, Michigan.
3. In 2005, the subject medical testing facility was moved to the current location at 300 Textile Road, Pittsfield Township, Michigan.
4. Trinity Health-Michigan is a hospital system that was formerly known as Mercy Health Partners and Sisters of Mercy Health Corporation. Laboratory Associates of Michigan, Inc. is a corporation whose shareholders are a group of pathologists.
5. On October 1, 1997, seven of the Petitioner hospitals jointly purchased all of the assets of the subject laboratory from Warde for $1,014,161.
6. All subsequent equipment was purchased with funds from the co-tenant hospitals.
7. Petitioner's financial statements were reviewed by the accounting firm of Deloitte and Touche showing the joint ownership of the medical testing equipment to co-tenant hospitals.
8. Petitioner's federal income tax returns of Warde were signed by Warde and the accounting firm of Deloitte and Touche.
9. The hospitals acquired, own and operate the laboratory equipment as tenants-in-common, with each hospital co-tenant owning an undivided ownership interest in each piece of equipment.

10. The co-tenancy structure is established by the Co-Tenancy and Operating Agreement.
11. Each time a new hospital co-tenant is admitted to the Michigan Co-Tenancy Laboratory, the existing hospital co-tenants and the newly admitted hospital co-tenant execute an agreement which admits the new hospital co-tenant and binds it to the terms and conditions of the October 1, 1997 Co-Tenancy and Operating Agreement.
12. Each hospital co-tenant's percentage ownership interest in each laboratory asset corresponds to the hospital co-tenant's utilization of the laboratory assets to perform its testing.
13. Each hospital co-tenant is a non-profit corporation that is a charitable organization with the exception of Hurley Medical Center.
14. Each of the co-tenant hospitals is charitable in nature and in operation.
15. Each hospital co-tenant has a charity care policy and an open access policy.
16. The Co-Tenancy and Operating Agreement requires that each hospital co-tenant be exempt from federal income tax under Internal Revenue Code section 501(c)(3).
17. At the time the hospital co-tenants purchased the laboratory equipment from Warde on October 1, 1997, the hospital co-tenants simultaneously leased back to Warde the right to use the testing equipment.
18. The Lease Agreement leases to Warde only the right to use the excess capacity of the equipment.
19. Warde is charged the cost of the testing plus a 5% profit mark-up for use of the excess capacity of the laboratory equipment.

20. Warde sells excess testing capacity to for-profit hospitals (and non-profit hospitals) as well as signs contracts on behalf of the hospital co-tenants.

21. Since October 1997, the hospital co-tenants have had a contractual arrangement with a third party professional corporation to provide medical and laboratory management services at the laboratory.

22. The hospital co-tenant testing and the Warde commercial testing are performed at the same facility, with the same personnel, and with the same equipment.

23. There is a separate utilization percentage between the co-tenant hospitals and Warde.

Fiscal Year Ending in June	Hospital Co-Tenant Utilization	Warde Utilization
2006	94.8%	5.2%
2007	93.3%	6.7%
2008	88.4%	11.6%
2009	87.2%	12.8%
2010	86.9%	13.1%
2011	90.3%	9.7%

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); *APCOA, Inc v Dep't of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995). 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.* at 207.

It is also well settled that a petitioner seeking a tax exemption bears the burden of proving that it is entitled to the exemption. The Michigan Court of Appeals, in *ProMed Healthcare v*

City of Kalamazoo, 249 Mich App 490; 644 NW2d 47 (2002), discussed Justice Cooley's treatise on taxation and held that:

> [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.* at 494, 495.
>
> (Also, see *Holland House v Grand Rapids*, 219 Mich App 384, 394-395; 557 NW2d 118 (1996)).

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

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

In *Wexford Medical Group v Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006), the Michigan Supreme Court confirmed the test for exempting certain property from property taxes under MCL 211.7(o):

> (1) The real estate must be owned and occupied by the exemption claimant;
> (2) The exemption claimant must be a non profit charitable institution, and
> (3) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

In the instant case, the parties agree that Petitioner's co-tenant hospitals each is a non-profit exempt institution for the years at issue. The parties disagree, however, whether Michigan Co-Tenancy Laboratory is an unincorporated cooperative that should be treated as a non-exempt cooperative.

Here, Petitioner must prove by a preponderance of the evidence that it is a "charitable institution." In this regard, the Michigan Supreme Court concluded that the "institution's activities as a whole must be examined." (See *Michigan United Conservation Clubs v Lansing Township*, 423 Mich 661; 378 NW2d 737 (1985) ("*MUCC*"), which held that "[t]he proper focus in this case is whether MUCC's activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons." (Emphasis added.) (*Id*. at 673.)

Whether an institution is a charitable institution is a fact specific question that requires examining the claimant's overall purpose and the way in which it fulfills that purpose. In this regard, the Michigan Supreme Court held in *Wexford, supra*, that several factors must be considered in determining whether an entity is a "charitable institution for purposes of MCL 211.7o":

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

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

(3) a "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.

(4) a "charitable institution brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.

(5) a "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.

(6) a "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

Petitioner has applied and analyzed the tests under *Wexford, supra,* to each co-tenant hospital. The noted federal exemption to each co-tenant hospital is consistent with the intent and purpose of each non-profit, charitable institution. Each co-tenant hospital is incorporated under the non-profit corporation statute of its state of incorporation. The sole purpose of each co-tenant hospital is to provide health care to relieve people from disease, suffering or constraint. This charitable purpose is evidenced in the articles of non-profit incorporation of each of co-tenant hospital. Each co-tenant hospital has an open access policy and a charity care policy, under which no person in need of care that comes to a hospital co-tenant is ever denied care. The nature and purpose of each co-tenant hospital is charitable, as reflected in each hospital co-tenant's articles of non-profit incorporation.

Petitioner's application of *Hospital Purchasing Service of Michigan v Cadillac, supra,* to the present case is pertinent. *Hospital Purchasing Service* is parallel to the present case. The incentive for the shared effort in *Hospital Purchasing Service* was the same as in the present case: the cost reduction of acquiring items used in providing hospital services through economies of scale. In addition, there were a number of for-profit, non-member hospitals that purchased

supplies through *Hospital Purchasing Service*. The for-profit activity does not undermine the primary purpose of the non-profit co-tenant hospitals.

Petitioner's analysis of *Webb Academy v Grand Rapids, supra,* is applicable to the present case. The Supreme Court held that a school property qualified for exemption albeit a portion of the property was used for barn storage rental. The Court held that the entire property would be exempt when the entire property is used primarily for exempt purposes and the non-exempt use occurs when there would otherwise be no use. *Webb Academy* at 535, 538, 539. In the present case, the medical testing for Warde is subordinate and incidental to the primary medical testing conducted for the co-tenant hospitals.

Petitioner's application of *Saginaw County Agricultural Society v Saginaw, supra,* is also germane to the present case. The Court of Appeals held that a 78-acre parcel used for fair purposes was exempt. A small portion of acreage was leased for car storage in the off-season. The non-fair use was incidental to the exempt fair use. In the present case, the excess capacity use of medical testing equipment is secondary to the testing conducted for the co-tenant hospitals. The primary, exclusive and predominant use of the medical testing equipment is for the co-tenant hospitals.

Respondent contends that the only relevant subsections are (1) and (2). However, Respondent does not apply these subsections to either the Michigan Co-Tenancy Laboratory (herein referred to as MCL) or to the individual hospital co-tenants. Respondent states, "Those subsections . . . must be strictly construed and no exemption may be found by implication." (Respondent's Brief, p 7). Moreover, Respondent does not distinguish one subsection from another. Respondent does not analyze how these subsections should be constructed to the facts

of this appeal. Likewise, Respondent does not demonstrate how the facts of this appeal should not be applied by implication. The Tribunal is not clear how Respondent has applied or analyzed certain subsections of MCL 211.7o in the present case.

Respondent contends that substance over form is the applicable standard in the present case. Regardless of the formation of hospital co-tenants, the substance of Warde in relation to the hospitals did not change. The commercial, for-profit activities of Petitioner have remained the same. The overall cooperative effect of the association amounts to a non-exempt commercial enterprise. The thrust of Respondent's argument is that Michigan Co-Tenancy Laboratory is a de facto cooperative that is taxable. This supposition completely negates the form ***and*** substance of each co-tenant hospital. Warde (as the one-third partner) does not own the personal property equipment. Petitioner's operating agreements specifically give an undivided ownership interest in the medical testing equipment to each co-tenant hospital. The operating agreements give no ownership interests to any other party or entity. Warde is under no obligation to make an appeal without ownership of the personal property. Likewise, the obligation of each co-tenant hospital to file a separate appeal is not reasonable in light of the collective ownership of the medical testing equipment.

Petitioner's election as a co-tenancy rests on the foundation of each non-profit, charitable hospital. A hospital cannot become a co-tenant without first becoming a non-profit, charitable institution. The formation of co-tenant hospitals is to reduce the cost of medical testing. The purpose of the co-tenant hospitals is not for-profit enterprises. The for-profit, commercial arm of the co-tenancy is subordinate and incidental to the medical testing operations. In other words, the formation of the co-tenant hospitals is purposeful and meaningful to the exemption appeal.

Respondent's argument that substance takes priority over form is unpersuasive to the facts of this appeal.

Respondent focuses on MCL as an unincorporated association or cooperative that is not exempt. Respondent acknowledges that each hospital under the co-tenancy is a non-profit, charitable institution. Each hospital (separately) would qualify for exemption under 211.7(o) for the purchase of medical equipment. Respondent has not distinguished the difference between a single exempt institution and an exempt group of hospitals. Again, Respondent argues "substance over form." Respondent's issue of substance over form contradicts the stipulation that each co-tenant hospital is a non-profit, charitable, exempt institution.

The entity Warde is not the primary substance of Petitioner. Warde is only able to use the excess capacity of the testing equipment. The formality of excess capacity is a restriction. Warde's use of the testing equipment is subordinate to the testing for the co-tenant hospitals. Warde's use of the testing equipment does not interfere with the testing of the co-tenant hospitals. Petitioner has demonstrated that the utilization of the testing equipment is predominantly used by the non-profit hospitals and NOT by Warde. (Petitioner's Brief, p 17). The actions of the non-profit, charitable hospitals are manifested by the utilization of the medical testing equipment.

Warde's function as an entity and agent of MCL is clearly established in the co-tenancy and operating agreements. However, the commercial component of the laboratory testing is not all-encompassing. Commercial testing is not the total make-up of the hospital co-tenants. In other words, the hospital co-tenants do no carry out charitable purposes individually and collectively for mere convenience. The operating agreements, tax returns and financial

statements are proof of an intended purpose to minimize the cost of laboratory testing. The substance of Michigan Co-Tenancy is not exclusively the existence of Warde as an entity. The effect and meaning of formal contracts is not diminished by the existence of a for-profit element in an otherwise non-profit organization.

The benefit of reduced laboratory testing is not exclusively meant for the co-tenant hospitals. The cost reduction facilitates the purpose of each non-profit, charitable institution for which each co-tenant hospital was incorporated. MCL does not benefit or profit from this cost reduction; MCL is unincorporated. There is no affirmative election (i.e., check the box regulations) by MCL to be treated as a cooperative. Moreover, MCL is not required to incorporate or classify itself as a cooperative. Petitioner refutes Respondent's contention that the four tests under MCL 501(e) are applicable.

Lastly, Respondent's contention that accounting standards is determinative in this appeal is not pertinent. Accounting standards offer a framework in the business world. These standards are noteworthy but are not the singular driving force in the make-up of Petitioner's co-tenant hospitals.

Respondent contends that Petitioner's co-tenancy should be treated as a de facto cooperative and is therefore not exempt from taxation. Petitioner argues that the co-tenancy is an unincorporated (non-entity) co-tenancy where the co-tenant hospitals own the medical testing equipment.

Each of Petitioner's co-tenant hospitals satisfies the tests found in *Wexford*. Yet, Respondent contends that the substance of Petitioner is unchanged although the form of Petitioner changed since October, 1997. Respondent does not differentiate an individual exempt

hospital from a collective group of hospitals that meet the same criteria. Respondent's "substance over form" argument does not articulate why a co-tenancy of hospitals is less charitable than each independent hospital.

Petitioner provided testimony, evidence and argument that the co-tenant hospitals' purpose, intent and function are non-profit and charitable through their activities such as reducing the cost of esoteric testing. This testimony and evidence clearly show that Petitioner's primary reason for being is as an unincorporated group of non-profit, charitable hospitals to offer medical testing at reduced costs. Petitioner's Chief Financial Officer testified that Petitioner co-tenancy removes the cost of independent testing laboratories. The economies of scale and the elimination of independent laboratory profit results in reduced costs for esoteric medical testing.

Petitioner's charitable activities, taken as a whole, do constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons. While Petitioner conducts commercial business for-profit testing services, the Tribunal finds that Petitioner's purposes are primarily for the benefit of the public, and not to provide for-profit commercial services. Thus, Petitioner is organized primarily to provide something to persons in need to benefit the community at large. Petitioner's charitable activities are laudable and obviously beneficial in terms of reduced cost of medical testing to each co-tenant charitable hospital. When all of Petitioner's activities are taken as a whole, the Tribunal cannot help but find that Petitioner did prove by a preponderance of the evidence that it qualifies for a property tax exemption under MCL 211.9(1)(a) and MCL 211.7o.

JUDGMENT

IT IS ORDERED that the subject property is exempt pursuant to MCL 211.9(1)(a) and MCL 211.7o.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after

December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008 at the rate of 3.315 for calendar year 2009, (xv) after December 31, 2009 at the rate of 1.23% for calendar year 2010, (xvi) after December 31, 2010 at the rate of 1.12% for calendar year 2011, and (xvii) after December 31, 2011 at the rate of 1.09%.

This Opinion and Judgment resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: December 13, 2011 By: Marcus L. Abood