

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

The Wellness Plan,  
Petitioner,

v

MTT Docket No. 345600

City of Oak Park,  
Respondent.

Tribunal Judge Presiding  
Kimbal R. Smith III

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING PETITIONER'S MOTION FOR PERMISSION TO FILE REPLY BRIEF  
REGARDING SUMMARY DISPOSITION MOTION

FINAL OPINION AND JUDGMENT

**I. INTRODUCTION**

Petitioner, The Wellness Plan ("TWP"), is appealing the denial of exemption from both real and personal tax assessments by Respondent, City of Oak Park. On December 23, 2008, Petitioner filed a motion requesting the Tribunal grant it summary disposition in the above-captioned case pursuant to MCR 2.116(C)(10). On January 14, 2009, Respondent filed a response in opposition to Petitioner's Motion for Summary Disposition or, in the alternative, requested the Tribunal grant summary disposition in favor of Respondent. On January 19, 2009, Petitioner filed a Motion for Permission to File Reply Brief Regarding Summary Disposition Motion and a proposed reply brief. On January 27, 2009, Respondent filed a Response to Petitioner's Motion for Permission to File Reply Brief Regarding Summary Disposition Motion.

**II. PETITIONER'S CONTENTIONS**

Petitioner contends that on October 22, 2007, Petitioner's four medical clinics were designated Federally Qualified Health Center Look-Alikes ("FQHC Look-Alike") by the Centers for Medicare & Medicaid Services ("CMS"). The Health Resources and Services

Administration (“HRSA”) grants this FQHC Look-Alike status for one year terms and requires that service providers apply for recertification each year. By letter dated December 4, 2008, Petitioner was notified by CMS of its recertification for the period of October 22, 2008 to October 21, 2009.

Petitioner also contends that in January 2008, it applied to Respondent for exemption from tax assessment based on its FQHC Look-Alike status, pursuant to MCL 211.7jj. However, the 2008 Notice of Assessment did not recognize the exemption. TWP sought review of the assessment at the March 2008 Board of Review, which reconfirmed the Assessor’s Assessed and Taxable Values in its March 24, 2008 decision.

Petitioner contends that the Board did not provide a specific explanation of its decision and that the practical effect of the decision was to deny Petitioner the requested exemption. On May 6, 2008, Petitioner filed a Petition of Appeal with the Tribunal seeking reversal of the Board of Review decision and formal recognition of its tax-exempt status.

Petitioner contends that “[a]s a FQHC Look-Alike, it satisfies the definition of a FQHC set forth in 42 USC 1396d(l)(2)(B)(iii), and therefore TWP, as an FQHC Look-Alike is a FQHC within the meaning of MCL 211.7jj.” In support of this contention, Petitioner refers to MCL 211.7jj, which states in pertinent part:

[R]eal and personal property of a federally-qualified health center is exempt from the collection of taxes under this act. As used in this section, "federally-qualified health center" means that term as defined in section 1396d(l)(2)(B) of the social security act, 42 USC 1396d.

Petitioner also refers to the definition of a FQHC in 42 U.S.C. 1396d(l)(2)(B):

- (B) The term “Federally-qualified health center” means an entity which—
  - (i) is receiving a grant under section 254b of this title,
  - (ii)
    - (I) is receiving funding from such a grant under a contract with the recipient of such a grant, and

- (II) meets the requirements to receive a grant under section 254b of this title,
- (iii) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant, including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity, or
- (iv) was treated by the Secretary, for purposes of part B of subchapter XVIII of this chapter, as a comprehensive Federally funded health center as of January 1, 1990; . . .

Petitioner contends that TWP meets the requirements in subsection 1396d(l)(2)(B)(iii).

Petitioner also contends that the HRSA website states specifically that both grant-supported FQHCs and FQHC Look-Alikes are FQHCs where it states:

For purposes of reimbursement, the Centers for Medicare and Medicaid Services (CMS) does not distinguish between FQHC Look-Alikes and section 330 grantees. Both types of health centers are considered FQHCs and therefore, are treated in the same manner with regard to receiving enhanced Medicaid (under Prospective Payment System or an alternative method) and Medicare FQHC reimbursement rates, and adhering to Medicare and Medicaid reporting requirements.

*See* Exhibit J of Petitioner’s Brief at pg. 4. Petitioner also contends that other HRSA publications specifically tie the term “FQHC Look-Alike” to the statutory language of section 1905(l)(2)(B)(III), which is codified at 42 U.S.C. 1396d(l)(2)(B)(iii). *See, e.g.*, Exhibit K of the Petitioner’s Brief – Program Information Notice 1999-10, Implementation of the Balanced Budget Act Amendment of the Definition of Federally Qualified Health Center Look-Alike Entities for Private Nonprofit Entities at pg. 1.

Petitioner argues that for the purpose of MCL 211.7jj there is no difference between a FQHC Look-Alike and a grant funded FQHC and, as such, there is no genuine issue of material fact in this case.

### III. RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is not exempt from taxation under MCL 211.7jj because Petitioner has not established that an FQHC "Look-Alike" is entitled to the exemption afforded to a "bona fide" FQHC. In support of this contention, Respondent states that the statutory language of MCL 211.7jj references FQHCs only, that it makes no provision for "Look-Alike" entity, and that the federal statute cited in MCL 211.7jj does not expand the reach of the exemption.

Respondent does not dispute that Petitioner owns and operates a medical facility within Respondent's corporate boundaries at 21040 Greenfield Road and that TWP has been granted the designation of FQHC Look-Alike status with respect to Medicaid coverage and payment. Respondent states that "the only disputed fact or issue in the instant matter is TWP's assertion that MCL 211.7jj provides for real and personal property tax exemptions for an FQHC *Look-Alike*, despite the fact that the statutory language itself specifies an exemption only for an FQHC, that the statute does not reference the *Look-Alike* entity whatsoever, and does not reference provisions of federal law which would conclusively demonstrate that a *Look-Alike* is entitled to identical treatment as an FQHC.

Respondent contends that if the legislature intended MCL 211.7jj to include the FQHC Look-Alike entities in its grant of real and personal property tax exemption to FQHCs, the language would have explicitly specified such an intent and that Petitioner has offered evidence only of intended identical treatment/consideration for FQHCs and FQHC Look-Alikes in the realm of Medicare and Medicaid reimbursements, but not in the realm of real and personal property tax exemption. In support of these contentions Respondent emphasizes that FQHCs receive grants under section 254b of the Social Security Act that FQHC Look-Alikes do not and

that Petitioner has placed nothing in the record providing reasons for this distinction.

Respondent also indicates that portions of the same HRSA website cited by Petitioner contains limiting language regarding the extent to which FQHCs and FQHC Look-Alikes are to receive identical consideration.

Respondent argues that the instant matter presents genuine issues of material fact, rendering a grant of summary disposition improper.

#### **IV. FINDINGS OF FACT**

The property under appeal is a former Health Maintenance Organization (“HMO”) that now operates by providing comprehensive primary health care, dental and mental health services primarily to members of Medicaid HMOs and those most in need within their service area.

On October 22, 2007, the subject property was designated a FQHC Look-Alike by the Centers for Medicare & Medicaid Services (“CMS”) under its delegated authority from the Secretary of the Department of Health and Human Services. The Health Resources and Services Administration (“HRSA”) grants this FQHC Look-Alike status for one year terms and requires that service providers apply for recertification each year. By letter dated December 4, 2008, Petitioners were notified by CMS of their recertification for the period of October 22, 2008 to October 21, 2009.

#### **V. APPLICABLE LAW**

##### **A. FEDERALLY QUALIFIED HEALTH CENTER LOOK-ALIKE STATUS**

Michigan’s Tax Code provides an exemption from real and personal property taxes for FQHCs. MCL 211.7jj. This provision incorporates by reference 42 U.S.C. 1396d(l)(2)(B) (codification of section 1905 of the Social Security Act (“SSA”)) for its definition of a FQHC. An entity can meet the requirements of a FQHC solely by receiving a grant under 42 U.S.C.

254b or by receiving such grant under contract with an entity receiving the grant and independently meeting the requirements to receive the grant. However, an entity can also satisfy the requirements of a FQHC if the entity is determined by the Secretary of Health and Human Services to meet the requirements for receiving a 254b grant based on the recommendation of the HRSA.

Section 330 of the Public Health Service Act (“PHSA”) is codified in 42 U.S.C. 254b and defines “health centers” that serve a medically underserved population and qualify for grant funding. FQHC Look-Alikes must meet the definition of “health centers” in 254b although, by definition, they do not receive grant funding.

FQHCs are a program created by Congress to allow special Medicare and Medicaid payments for medical centers that ensured that grant dollars intended for the uninsured would be available for that purpose. Congress extended these special Medicare and Medicaid payments for Look-Alike clinics that operate in compliance with the requirements of the FQHC program but do not receive 254b grant funding.

The purpose of both FQHCs and FQHC Look-Alikes is:

[t]o ensure that there are appropriate numbers of health centers to serve the millions of uninsured and underinsured populations throughout the country . . . [and] [a]s such FQHC Look-Alike entities are expected to demonstrate the same commitment as grantees to serve all populations residing in their respective medically underserved communities, and to satisfy the administrative, management, governance and service-related requirements unique to section 330 funded health centers.

*See* Exhibit I of Petitioner’s Brief at pg. 3. In addition, the term “Federally Qualified Health Center” refers to three different types of clinics: (1) Health Centers funded under section 330 of the PHSA; (2) FQHC look-alikes that have been identified by the HRSA and certified by the CMS as meeting the definition of “Health Center” under section 330

PHSA although they do not receive funding under section 330; and (3) outpatient health programs or facilities operated by tribal organizations. See Exhibit J of Petitioner's Brief at pg. 2.

B. SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated “[a] motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact.” Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

When determining a motion for summary disposition pursuant to MCR 2.116(C)(10), the trial court must give the benefit of reasonable doubt to the non-movant and determine whether a record might be developed that would leave open an issue upon which reasonable minds could differ. *Mount Carmel Mercy Hosp v Allstate Ins Co*, 194 Mich App 580, 585; 487 NW2d 849 (1992).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of

supporting his position by presenting his documentary evidence for the court to consider.

*Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.

*Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.

*McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

## VI. CONCLUSIONS OF LAW

Petitioner moves for summary disposition pursuant to TTR 230 and MCR 2.116(C)(10). This Tribunal has carefully considered Petitioner's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10), and based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting Petitioner's Motion is appropriate.

Summary Disposition must be granted under MCR 2.116(C)(10), because the parties' documentary evidence demonstrates that there is no genuine issue of material fact. The sole issue in this matter is one of pure law: whether MCL 211.7jj provides for real and personal property tax exemptions for an FQHC Look-Alike.

Pursuant to MCL 211.7jj, real and personal property is exempt from property taxes where the property is designated a Federally Qualified Health Center as defined in 42 U.S.C. 1396d(l)(2)(B). Petitioner, a FQHC Look-Alike, meets the requirements outlined in 42 U.S.C. 1396d(l)(2)(B)(iii) for a FQHC and, as such, is exempt from property taxes under MCL 211.7jj.

Respondent asserts that because Petitioner does not qualify for the grant funding under section 330 of the PHSA that it fails to meet the requirements for exemption pursuant to the above-mentioned statutes. However, Respondent misinterprets the significance of the receipt of grant funding in the scheme of the FQHC program. The proper way to conceive of this program requires a recognition that the term "FQHC" is comprehensive and encompasses both section 330 grant funded entities *and* FQHC Look-Alikes. FQHC Look-Alikes are appropriately viewed as mature applicants for FQHC status, but are indistinguishable from FQHCs in terms of the purpose for which they were created and many of the benefits they receive. The differences between the grant-funded entities and FQHC Look-Alikes appear to be related primarily to the benefits they receive and not the requirements that need to be met to qualify for grant funding.

Given the above, the Tribunal finds that Petitioner has established through documentary evidence that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Therefore, the Tribunal finds that Petitioner is entitled to exemption from real and personal property taxes under MCL 211.7jj for each year that it receives and maintains its FQHC Look-Alike status.

## **VII. JUDGMENT**

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

IT IS FURTHER ORDERED that Petitioner's Motion for Permission to File Reply Brief Regarding Summary Disposition Motion is GRANTED.

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

MICHIGAN TAX TRIBUNAL

Entered: July 17, 2009  
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By: Kimbal R. Smith III