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

Wedgwood Christian Services,
Petitioner,

v

MTT Docket No. 438062

City of Grand Rapids,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

Procedural History

Petitioner, Wedgwood Christian Services ("Wedgwood"), is a Michigan non-profit corporation. Article II of Petitioner's Articles of Incorporation states,"[i]t provides professional care and treatment for abused, neglected and emotionally impaired children and their families as well as other human services which meet important needs of the community. . . . ." See Petitioner's Brief at 2. The parcel at issue is improved real property that was acquired by Petitioner on December 28, 2011. Petitioner filed an Application for Exemption from Real/Personal Property with the City of Grand Rapids which was denied on March 19, 2012. Petitioner filed the instant appeal on May 29, 2012. On June 14, 2012, Respondent filed an answer to the petition.

On December 12, 2012, Petitioner filed a Motion for Summary Disposition ("Motion") and Brief in Support of its Motion. It appeared that Respondent did not file a response to the Motion and summary disposition was granted in favor of Petitioner on January 29,

2013 by Tribunal Judge Kimbal R. Smith, III. Upon receipt of the Order Granting Petitioner's Motion for Summary Disposition, Respondent informed the Tribunal that it did not receive a copy of Petitioner's Motion and the parties filed a Stipulation to Set Aside Order Granting Petitioner's Motion for Summary Disposition. An Order Vacating the Order Granting Petitioner's Motion for Summary Disposition was entered on February 22, 2013 by Judge Smith. In the Order, it stated that "A response, if any, shall be filed within 21 days of the entry of this Order, as allowed by TTR 230 [now TTR 225]." On March 15, 2013, Respondent filed a Response to the Motion with Brief in Support.

On January 24, 2014, a prehearing conference was held in this matter. At that time, the parties agreed that no new facts, other than those presented in the Motion and Response, would be put forth at any potential hearing and that the legal dispute consists of the occupancy of the subject property on December 31, 2011. The Tribunal Judge and parties mutually agreed to allow the Tribunal Judge to rule on the Motion and Response in order to close this case.

Petitioner's Contentions

Petitioner contends that the subject property is exempt from taxation under MCL 211.7o(1), for the 2012 tax year, as it owned and occupied the subject property on December 31, 2011. MCL 211.7o states:

> 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 that nonprofit charitable institution was

> incorporated is exempt from the collection of taxes under this act. [Emphasis Added]

On December 28, 2011, Petitioner purchased the subject property from T.E. Beckering Enterprises, Inc. and thus became its owner as of that date. See Petitioner's Brief, Exhibit A-3. Petitioner contends that the only issue in this matter is its occupancy of the property pursuant to MCL 211.7o(1). In support of its contention that it occupied the subject property on December 31, 2011, it maintains that it took possession of the property on December 15, 2011, by receiving a set of keys to the property "with permission to immediately begin occupying the property." See Petitioner's Brief at 9. Petitioner maintains that it was habitually present at the property and maintained a regular physical presence as required by the Michigan Supreme Court in *Liberty Hill Housing Corporation v. City of Livonia*, 480 Mich 44; 746 NW2d 282 (2008). See Petitioner's Brief at 9.

Petitioner maintains that it was present habitually and maintained a regular physical presence at the subject property for the following reasons: Diane Rabe, CFO of Wedgwood, received keys to the subject property building on December 15, 2011. At that time, she gave the keys to Mr. Lee Huff, Facilities Manager, and instructed him to ready the building for use by Kylene Schipper who is a therapist at Wedgwood. On December 15,th Mr. Huff moved a desk and four chairs into the building so Ms. Schipper was able to immediately meet with clients. See Petitioner's Brief, Exhibits A and B, Affidavits of Diane Rabe and Lee Huff.

Petitioner contends that on December 19, 2011, Ms. Schipper was given keys to the subject property, the code to deactivate its burglar alarm, and she conducted a therapy session on that date. She indicated that she had an appointment scheduled on December 18, 2011, but the client did not appear at the agreed upon time. She also indicated that she had an appointment scheduled on December 28, 2011, but that client also failed to attend. Ms. Schipper stated that between the period from December 18, 2011 and December 31, 2011, she had been at the building on at least two or three occasions. She also stated that the water, electricity and heat were on when she was present in the building on December 19th. *See* Petitioner's Brief, Exhibit C, Affidavit of Kylene Schipper. Petitioner also maintains the Mr. Huff was in the building to adjust the thermostat on December 22, 2011. Mr. Huff stated that on the 15th, the water, heat and electricity were on in the building. See Affidavit, Huff, *supra*.

Ms. Rabe contended that immediately after the closing on the subject property on December 28, 2011, she instructed Cindy Hardy, Associate Director of Finance of Wedgwood, to transfer all the utilities to Wedgwood's name. *See* Affidavit, Rabe, *supra*. Attached as Exhibits A-6, A-7, A-8, A-9 and A-10 to Petitioner's Brief are copies of the gas bill showing a summary of charges from December 28, 2011 until January 18, 2012 at Wedgwood's address, a copy of an electric bill with Petitioner's name and address showing a summary of charges from December 28, 2011 through January 25, 2012, a certificate of liability insurance showing Wedgwood placed insurance on the subject property as of December 27, 2011, a memo with Wedgwood's address indicating that fire protection services, lawn/snow removal services, and security services were transferred to

Wedgwood, and a copy of the property's water/sewer agreement submitted to the City of Grand Rapids on December 28, 2011 requesting that water and sewer services be transferred to Wedgwood's name.

Respondent's Contentions

Respondent concedes that Petitioner is a non-profit charitable institution under section 501(c)(3) of the Internal Revenue Code, is a Michigan nonprofit corporation, and that it owned the subject property on December 31, 2011. In fact in 2013, Petitioner was granted an exemption from real property taxation. Respondent contends, however, that on December 31, 2011, Petitioner did not occupy the subject property as required by law under MCL 211.7o in order to qualify as a charitable institution exempt from taxation under such statute.

Respondent contends that the subject property was not occupied on December 31, 2011 as it did not have water service on that date. Respondent maintains that water service to the subject property was shut off on April 20, 2011 due to non-payment of the past due amount of $853.05. Respondent contends that the water in the subject property was not turned on again until January 9, 2013, upon the City's representative's meeting with Wedgwood's Facilities Manager on site to turn on the water. Respondent contends that:

> The Grand Rapids City Ordinance Chapter 132, section 8.26, adopts the Michigan Building Code for application and enforcement purposes. Chapter six of the Michigan Plumbing Code provides that every structure equipped with plumbing fixtures and utilized for human occupancy or habitation shall have potable water supplied to it, and hot water or tempered water for hand-washing. Respondent's Brief at 6.

Respondent further contends that in *Roberts v. Twp of W, Bloomfield*, MTT No 303098, 2012 WL 1649765 (2012) (Mich Co App May 10, 2012):

> The court essentially upheld the lower court referee when it held that water to a residential property is essential for using the bathroom and/or turning on the kitchen sink amongst other things. The referee in the lower court in *Roberts* held that Roberts did not demonstrate that he occupied his residence because water usage for occupancy at a dwelling was a necessity, and no water had been used. Respondent's brief at 6.

Respondent contends that just like in *Roberts*, water service to the subject property was absent and the Michigan Plumbing Code makes it clear that potable and tempered water for hand washing are essential in buildings occupied by humans. Respondent attached a copy of the Affidavit of Eileen Pierce, Administrative Services Officer II in the City of Grand Rapids' water department, confirming that she had reviewed the water history of the subject property and found that the water was turned off from April 20, 2011 until January 9, 2012. Respondent's Brief, Exhibit 2, Affidavit of Eileen Pierce. Respondent further attached a copy of email correspondence between Cindy Hardy and Jeni Frost from the City of Grand Rapids, demonstrating that the water was off at the subject property on December 28, 2011 and that attempted arrangements were made for Mr. Huff to meet a representative from Grand Rapids at the property to turn on the water. Initially, the City indicated on December 28, 2011 at 9:03 a.m. that it could schedule a turn on Friday, "I think." (December 28, 2011 was a Friday). Such suggestion did not come to fruition, and thereafter a tentative date of December 30, 2011 was suggested by Ms. Hardy. The City indicated that no one would be available to meet Mr. Huff on the 30th and that January 9, 2012 or later was the first available date. See Respondent's Brief, Exhibit 5.

With regard to the requirement under MCL 211.7o that ownership and occupancy of the subject property was required on December 31, 2011, Respondent contends that it is irrelevant that Petitioner entered the property on December 15, 2011 or that a counseling session was allegedly held on December 19th, because the property wasn't owned by Petitioner on those dates. Respondent contends, "[t]o even consider dates prior to ownership for the charitable exemption would be broadening the exemption contrary to the requirement to strictly construe property tax exemptions." See Respondent's Brief at 5. Respondent contends that Petitioner's one attempted use of the property on December 28, for a counseling session does not satisfy the occupancy requirement under *Liberty Hill*:

> The dissent would hold that a charitable institution may occupy property by using it without maintaining a physical presence there. Such an interpretation leads to one of the following two unsatisfactory conclusions: (1) a charitable institution can occupy property without actually being physically present or (2) a charitable institution need only use the property sporadically or perhaps even once to occupy it. Neither of these conclusions is consistent with proper meaning of the term "occupy." Liberty Hill, supra at 61-62.

Respondent also points to *Kalamazoo Inst of Arts v City of Kalamazoo*, MTT No. 333648, 2011 WL 1090151 (2011) which it contends states, "that the intent to occupy or a one-time use doesn't equate to occupy under MCL 211.7o(1)." See Respondent's Brief at 5. Respondent further maintains that Ms. Rabe wrote on the Application for Exemption of Real and/or Personal Property submitted to the City, that the property was first used for counseling on December 29, 2011, contrary to its assertions that it utilized the property before that date. See Respondent's Brief at 2.

Findings of Fact

1. Petitioner is a Michigan nonprofit corporation incorporated by amendment on August 28, 2002, to the Articles of Incorporation of Christian Home for Boys, Inc.
2. The subject property is located at 1260 Ekhart Street, NE, Grand Rapids, Michigan.
3. Article II of Petitioner's Articles of Incorporation states,"[i]t provides professional care and treatment for abused, neglected and emotionally impaired children and their families as well as other human services which meet important needs of the community. . . . ." See Petitioner's Brief at 2
4. On December 28, 2011, in the State of Michigan, County of Kent, T.E. Beckering Enterprises, Inc. executed a valid Warranty Deed transferring title to Petitioner with respect to the subject property. *See* Petitioner's Brief, Exhibit A-3. Petitioner has been the lawful owner of record for the property since that date.
5. From December 15 to December 27, 2011, Petitioner was not the lawful owner of the property, but had access to the property by permission of the owner. *See* Affidavit, Rabe, *supra*. During this period, Petitioner moved furniture into the property, adjusted the thermostat, held one mental health therapy session for a client on December 19, 2011, and attempted to hold another session on December 18th. *See* Affidavits, Huff and Schipper, *supra*.
6. From December 28 to December 31, 2011, as lawful owner of the property, Petitioner attempted to hold a mental health therapy session there, however, the patient failed to attend. *See* Affidavit, Schipper, *supra*. Petitioner also took affirmative steps of ownership by transferring utilities and liability insurance on the property into its own name and contacting fire protection services, lawn/snow removal services, and security

services to be transferred into Wedgwood's name. *See* Petitioner's Brief, Exhibits A-6, A-7, A-8, A-9 and A-10.

7. Water, heat and electricity were turned on at the subject property on December 15, 2011 and December 19, 2011, and presumably December 18th upon which date Ms. Schipper had a counseling appointment scheduled, but the client did not attend. There was heat in the property on December 22, 2011 when Mr. Huff turned up the thermostat.
8. Water service was absent in the property from December 28, 2011 until January 9, 2012.
9. Chapter six of the Michigan Plumbing Code provides that every structure equipped with plumbing fixtures and utilized for human occupancy or habitation shall have potable water supplied to it, and hot water or tempered water for hand-washing.
10. Petitioner wrote on its Application for Exemption of Real and/or Personal Property filed with Respondent, that the subject property was first used on December 29, 2011 for substance abuse counseling.
11. At the hearing of this matter, the Tribunal was informed that the subject property received an exemption from property taxation for the 2013 tax year.

Applicable Law

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10), which provides the following grounds upon which a summary disposition motion may be based: "Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." There is no specific tribunal rule governing motions for summary disposition. As such,

the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such a motion. TTR 215.

The Michigan Supreme Court, in *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996), provided the following explanation of MCR 2.116(C)(10).

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure…[T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
>
> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.
>
> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id*. at 361-363. (Citations omitted.)

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. Exemption statutes are subject to a rule of strict construction in favor of the taxing authority." *Retirement Homes, Inc v Sylvan Twp,* 416 Mich 340, 348-349; 330 NW2d 682 (1982), *APCOA, Inc v Dep't of Treasury,* 212 Mich App 114, 119; 536 NW2d 785 (1995). 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.

MCL 211.2 states in pertinent part, "[t]he taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day . . . ." Petitioner's exemption claim is based on the taxable status of the real property, and thus, must be evaluated as of December 31, 2011 for tax year 2012.

The exemption at issue is found in MCL 211.7o(1) and states that "[r]eal … property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit

charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act." The three-part test to test eligibility for the exemption is:

> (1) the real estate must be owned and occupied by the exemption claimant;
> (2) the exemption claimant must be a nonprofit charitable institution; and
> (3) the exemption exists only when the building and other property thereon are occupied by the claimant solely for the purpose for which it was incorporated.

Wexford Medical Group v City of Cadillac, 474 Mich 192; 713 NW2d 734 (2006).

The Michigan Supreme Court defined occupancy under MCL 211.7o(1) to mean that the nonprofit charitable institution in question must "at minimum have a regular physical presence on the property" and "must actually occupy the property, i.e. maintain a regular physical presence there." *Liberty Hill Housing Corporation v City of Livonia, 480 Mich 44, 58; 746 NW2d 282, 290 (2008).* In *Liberty Hill*, the petitioner was a nonprofit corporation that owned single-family homes and leased those homes to individuals who qualified either because of low income or disability status. *Id.* at 46-47. Petitioner had no ongoing day-to-day presence in the homes, as it executed traditional residential leases with its clients and did not engage in any further activity at those residences. *Id.* at 47. The Court found that a lack of a regular physical presence meant that the petitioner did not "occupy" the homes as contemplated by MCL 211.7o(1). *Id.* at 62-63.

The Michigan Tax Tribunal has previously held that intent to occupy or a limited one-time use does not constitute occupation under MCL 211.7o(1). *Kalamazoo Institute of Arts v City of Kalamazoo*, MTT No. 333648, 2011 WL 1090151 (2011). In *K.I.A.*, Petitioner was a non-profit group that purchased the subject property during the subject tax year, entered into consultation to begin re-construction at the property, but had not yet begun to occupy the property as of December 31. *Id.* at 4. Petitioner had also leased the property to another non-profit group to hold a one-time event at the property during the subject tax year. *Id.* at 4. In granting a Motion for Summary Disposition in favor of Respondent, the Tribunal found that the Petitioner had failed to occupy the subject property, as required by *Liberty Hill*, as of tax day, and that the one-time use of the third-party non-profit also fails to satisfy the definition of occupancy pursuant to MCL 211.7o(1).

In *Roberts*, *supra*, Petitioner applied for a principal residence exemption ("PRE") from taxation. A PRE is governed by statute and provides that "[a] principal residence is exempt from the tax levied by a local school district for school operating purposes...." MCL 211.7cc(1). A "principal residence" is defined as "the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established." MCL 211.7dd(c). A principal residence "includes only that portion of a dwelling ... that is subject to ad valorem taxes and that is owned **and occupied** by an owner of the dwelling...." *Id.* [Emphasis added].

The Court in *Roberts* held that lack of water usage from September 4, 2007 through May, 2009 in the property residence, along with photographs or visual inspection of the property that showed the yard had not been tended to for at least two seasons, it lacked curtains or blinds, and had little furniture on the inside, was sufficient proof that the property was unoccupied in 2008 and 2009.

Conclusions of Law

The Tribunal, having carefully considered the case file and Petitioner's Motion, finds that granting Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is warranted. It finds that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.

To determine whether Petitioner qualifies for the requested exemption under MCL 211.7o, the Tribunal must apply the three part test set out in *Wexford, supra*. The parties agree Petitioner is a nonprofit charitable institution and thus, meets the second prong of the *Wexford* test. This finding is further supported by the fact that Petitioner was granted the exemption for the 2013 tax year.

Therefore, the Tribunal need only consider the first and third prongs of the *Wexford* test:

1. the real estate must be owned and **occupied** by the exemption claimant;
3. the exemption exists only when the building and other property thereon are **occupied** by the claimant solely for the purpose for which it was incorporated. [Emphasis added]

The parties agree that the property was owned by Wedgwood on December 31, 2011. The only issue is whether it was occupied by Wedgwood on that date.

In this case, it is problematic that Petitioner purchased the subject property on December 28, 2011, three days before tax day of December 31, 2011, and also during a time that many businesses are closed for the observance of holidays. In that amount of time, Petitioner was required to have a regular physical presence on the property and actually occupy the property, i.e. maintain a regular physical presence there. *Liberty Hill*, *supra* at 58. Here, it is undisputed that Petitioner was given keys and permission to lawfully enter and use the property beginning on December 15, 2011. *See* Affidavit, Rabe, *supra*, therefore its occupancy of the property began on that day at which time Petitioner's employee Mr. Huff moved Petitioner's furniture into the building, *See* Affidavit, Huff, *supra*., and ownership was added on December 28, 2011.

Another employee of Petitioner, Ms. Schipper, actually conducted a mental health therapy session at the property on December 19, 2011. Ms. Schipper was also ready and willing to conduct two other scheduled mental health therapy sessions at the property prior to December 31, 2011, and would have provided those services at the subject property, but for the failure of the service receivers to attend the appointments. *See* Affidavit, Schipper, *supra*. Mr. Huff also affirmed that he entered the property on December 22, 2011, to adjust the thermostat. *See* Affidavit, Huff, *supra*.

Compositely, that creates five instances of physical presence or use of the property in the 16-day period up to and including December 31, 2011, including one physical presence on the actual date of ownership. This case is factually distinguishable from *Liberty Hill, supra,* where Petitioner leased the property in question to third parties and did not regularly have a physical presence at the property. Here, instead of assigning rights of use of the property to private individuals for residential purposes, Petitioner's intention was to own and occupy the property itself, and it did in fact engage the property in such use prior to tax day. The actual physical occupancy of the property on December 15, 18, 19, 22 and 28, 2011 provide probative evidence of its regular physical presence including on the date of ownership.

This case is also distinguishable from *K.I.A.*, where Petitioner had not yet begun to occupy the property and where the limited, one-time use of a third-party non-profit did not constitute occupancy. In the present case, five instances of use in a 16-day period is sufficient to establish "a regular physical presence on the property," including presence on the day of ownership solely for the purpose for which it was incorporated of providing professional care and treatment. Unlike *K.I.A.*, the planned use was not future or theoretical, nor was it used solely for a one-time event. Nothing in the statute or case law indicates that Petitioner should be ineligible for MCL 211.7o(1) solely because its regular occupancy began shortly before tax day. Upon receiving permission from the prior owner to begin occupancy, Petitioner in fact immediately moved property into the building, took command of maintenance duties, scheduled counseling sessions, conducted a counseling session and, upon the transference to Petitioner, began contacting

utilities and the insurer to update those accounts. *See* Petitioner's Brief and Affidavits, *supra*.

Respondent contends that the subject property was not occupied on tax day because it did not have water service on that day and the Michigan Plumbing Code makes it clear that potable and tempered water for hand washing are essential in buildings occupied by humans. Respondent cites, *Roberts, supra*, to support its contention that it is essential to have water in a building for occupancy to exist. In that case, Petitioner had applied for a PRE for 2008 and 2009. It was established that the property utilized no water from September 4, 2007 through May, 2009 (20 months), photographs and visual inspection of the property demonstrated the yard had not been tended to for at least two seasons, it lacked curtains or blinds, and had little furniture on the inside. The court held that petitioner did not occupy the property as required by law based on the totality of the evidence, not just lack of water usage. Here, utilities and water were set to be transferred into Wedgwood's name on December 28, 2011 and it was only because Petitioner's Facilities Manager and the City of Grand Rapids water department were unable to coordinate schedules that the water was not turned on December 31, 2011. This case is factually distinguishable from *Roberts*, in that water service was active in the subject property on December 15th and 19th, 2011 and presumably on December 18th and 22nd when Ms. Schipper had a counseling appointment and Mr. Huff visited the property to turn up the thermostat. Even if no water was available in the property prior to January 9th, as contended by Respondent, its absence was only for a short period of time, far less than

20 months. The Tribunal does not find a lack of occupancy of the subject property due to its short absence of water service.

Respondent also contends that Ms. Rabe's application for exemption on behalf of Wedgwood was filed with the City and on it was written that the property was first used for substance abuse counseling on December 29, 2011. The Tribunal does not find the date on the application to trump the evidence that the property was utilized for counseling before that date. Mr. Huff indicated in his affidavit that he entered the building to ready it for counselling services on December 15th and Ms. Schipper contended that she held and scheduled sessions before the 29th.

Petitioner has shown that granting its Motion for Summary Disposition pursuant to MCR 2.116(C)(10) is appropriate. Further, Petitioner did prove, by a preponderance of the evidence, that it met the occupation requirement of MCL 211.7o as stated by the Court in *Wexford* and *Liberty Hill*. Respondent improperly denied Petitioner's exemption request pursuant to MCL 211.7o for the 2012 tax year and the Tribunal finds the subject property to be exempt from ad valorem property taxation for that year.

Judgment

IT IS ORDERED that Petitioner's Motion for Summary Disposition pursuant to MCR 2.116(C)(10) is GRANTED.

IT IS ORDERED that the subject property shall receive a 100% exemption pursuant to MCL 211.7o.

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Opinion, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Opinion. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and 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 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 Opinion. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, (iv) after June 30, 2012,

through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

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

By : Preeti Gadola

Entered: Feb 18, 2014