

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

Logan Community Resources Inc,
Petitioner,

v

MTT Docket No. 17-002397

Sodus Township,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF PETITIONER

FINAL OPINION AND JUDGMENT

INTRODUCTION

On August 29, 2017, Respondent filed a Motion for Summary Disposition (“Motion”), however, it did not indicate which court rule it relied upon in filing its Motion. Petitioner contends, and the Tribunal agrees, that Respondent filed its Motion pursuant to MCR 2.116(C)(8) asserting Petitioner has failed to state a claim upon which relief may be granted and/or MCR 2.116(C)(10) asserting there are no genuine issues of material fact and that it is entitled to judgment in its favor as a matter of law. On September 19, 2017, Petitioner filed a Response to the Motion (“Response”). Petitioner seeks a charitable exemption from the payment of property tax for the subject property, Parcel No. 11-19-0005-0008-02-9, under MCL 211.7o(1) and/or MCL 211.7o(8), for the 2017 tax year. Per its Petition, it appears Petitioner is also seeking an exemption for its personal property pursuant to MCL 211.9(1)(a). Further, in its Response, Petitioner alleges it is seeking an exemption from the payment of property tax pursuant to MCL 211.7n, as a non-profit educational institution. It is unclear if the request for an educational exemption under MCL 211.7n was put forth in its Petition. Nevertheless, Respondent, in its Motion, addressed the educational exemption “request” pursuant to MCL 211.7n, but not the request under MCL 211.9(1)(a). Petitioner seeks judgment in its favor pursuant to MCR 2.116(I)(2).

The Tribunal has reviewed the Motion, Response, and the exhibits submitted and finds denying Respondent’s Motion for Summary Disposition is warranted at this time. Further the Tribunal finds that

granting summary judgment in favor of Petitioner, pursuant to MCR 2.116(I)(2), is warranted at this time.

Petitioner “is a non-profit tax-exempt 501(c)(3) Indiana corporation that provides behavioral and learning therapy services to children with autism.”¹ Petitioner owns and operates LOGAN Autism Learning Center (“the Center”), the property in question. The improvement “consists of six classrooms, a sensory room, and a gymnasium/cafeteria.”² The Center sits on 6.5 acres, “with playground equipment adapted for children with developmental disabilities, including autism.”³

Respondent’s Contentions:

Respondent contends that to qualify for a real property tax exemption, “the claimant must have been incorporated under the laws of this state[.]”⁴ Respondent contends that Petitioner is an Indiana corporation and as such, its property cannot be exempt under Michigan law. Respondent further contends that the property does not qualify for exemption under MCL 211.7o because it charges a fee for its services and it does not benefit an indefinite number of persons because some individuals are required to pay for services and others are not, and members of the public who are not on the autism spectrum cannot utilize the Center’s services. Further, Respondent alleges Petitioner does not relieve a governmental burden, and it does not give a gift for the benefit of an indefinite number of people.

Pursuant to MCL 211.7n and MCL 211.9(1)(a), Respondent contends that Petitioner does not fit within the general scheme of education provided by the state and does not relieve a governmental burden.

Petitioner’s Contentions:

Petitioner contends that its property is entitled to an exemption from the payment of property tax for the 2017 tax year. Petitioner contends that the requirement that an organization be incorporated under the laws of the state of Michigan was held unconstitutional. Petitioner further contends that Respondent failed to address the seminal charitable tax exemption case, *Wexford Medical Group v City of Cadillac*⁵ or the recently decided Michigan Supreme Court case, *Baruch SLS v Tittabawasee Twp.*,⁶ which relate to exemption under MCL 211.7o(1). Petitioner also claims its property is eligible for exemption under MCL 211.7o(8).

¹ See Response at 4, referring to Exhibit 2, Affidavit of Matthew J. Harrington, President and Chief Executive Officer of Petitioner, Logan Community Resources (“Affidavit”).

² Response at 5.

³ *Id.*

⁴ Motion at 3, emphasis deleted.

⁵ *Wexford Medical Center v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

⁶ See *Baruch SLS, Inc v Tittabawasee Twp*, ____ Mich ____; ____ NW2d ____ (2017) (Docket No. 152047),

Petitioner alleges its property is eligible for exemption under MCL 211.7n, as it is an educational institution and substantially relieves the educational burden of government. Petitioner did not address potential qualification for exemption of its personal property pursuant to MCL 211.9(1)(a).

Conclusions of Law

Summary Disposition

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.⁷ As noted above, Petitioner contends that Respondent moves for summary disposition pursuant to MCR 2.116(C)(8) alleging Petitioner has failed to state a claim upon which relief may be granted. Further, Respondent may move for summary disposition under MCR 2.116(C)(10) asserting that no genuine issues of material fact remain. Petitioner further contends it is entitled to summary judgment in its favor pursuant to MCR 2.116(I)(2). The Tribunal finds Respondent moves for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10).

Motions under MCR 2.116(C)(8) are appropriate when “[t]he opposing party has failed to state a claim on which relief can be granted.” Dismissal should be granted when the claim, based solely on the pleadings, is so clearly unenforceable that no factual development could possibly justify a right to recovery.⁸ In reviewing a motion under this subsection, the court must accept as true all factual allegations in support of a claim, as well as all inferences which can fairly be drawn from the facts.⁹

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.¹⁰

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

⁷ See TTR 215.

⁸ See *Transamerica Ins Group v Michigan Catastrophic Claims Ass’n*, 202 Mich App 514, 516; 509 NW2d 540 (1993).

⁹ See *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).

¹⁰ See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

non-moving party.¹¹ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.¹² The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.¹³ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.¹⁴ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.¹⁵

Summary disposition under MCR 2.116(I)(2) is appropriate “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment . . . ,” and as such, the court may render judgment in favor of the opposing party.¹⁶

Charitable Exemption Pursuant to MCL 211.7o(1)

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.”¹⁷ Exemption statutes are subject to a rule of strict construction in favor of the taxing authority.¹⁸ 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

¹¹ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

¹² See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

¹³ *Id.*

¹⁴ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

¹⁵ See *McCormic v Auto Club Ins Ass’n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

¹⁶ See also *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000).

¹⁷ See MCL 211.1 (emphasis added).

¹⁸ *Retirement Homes 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).

is limited to the very terms of the statute the favor would be extended beyond what was meant.¹⁹

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax.²⁰

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*, 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.²¹

In the instant case, Petitioner asserts that the subject property is exempt from property taxation because Petitioner is a charitable institution under MCL 211.7o. Charitable institutions have already been recognized as exempt classes. Because Petitioner is attempting to establish membership in the class, the preponderance of evidence standard applies. Also, it appears from the pleadings that Petitioner is a non-profit Indiana corporation and is designated as a federal 501(c)(3) organization exempt from taxation;²² however, the Michigan standard for exemption is more rigorous than the federal standard: "the fact that a petitioner may qualify for tax exempt status under Federal law, i.e., Section 501(c)(3) of the Internal Revenue Code, creates no presumption in favor of an exemption from property taxes."²³ See also *American Concrete Institute v State Tax Comm*, which states: "The institute's exemption from Michigan ad valorem tax is not determinable by its qualification as an organization exempt from income tax under section 501(c)(3) of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act."²⁴

Petitioner and Respondent have presented or referred to the relevant statute regarding a charitable exemption from taxation under MCL 211.7o(1), however, Respondent has not referred to the relevant case law.

¹⁹ *Michigan Bell Telephone Co v Dep't 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.

²⁰ *Michigan Bell*, 229 Mich App at 207.

²¹ *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002) (emphasis added).

²² See Exhibits to Petition, filed May 22, 2017.

²³ *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748, 752 n 1; 298 NW2d 422 (1940).

²⁴ *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968).

The Tribunal finds the relevant statute, MCL 211.7o(1) 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 that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

In *Wexford*, the Supreme Court presented the test for determining if an organization is a charitable one under MCL 211.7o and required that:

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.²⁵

Respondent claims that Petitioner cannot qualify for a tax exemption because it is not incorporated in Michigan, however, the statutory requirement for Michigan incorporation was held unconstitutional in 1972. The Court in *Wexford* reiterated, “[t]he requirement that to be tax-exempt, an institution be incorporated within the state has been found to be unconstitutional.”²⁶ The Tribunal finds there is no requirement that Petitioner be incorporated in the state of Michigan and its property cannot be disqualified from exemption on the basis that it is an Indiana corporation.

The real estate must be owned and occupied by the exemption claimant

Petitioner contends it owned and occupied the subject property as of December 31, 2016. In its Motion, Respondent does not challenge such contention. As such, the Tribunal finds this requirement met.²⁷

The exemption claimant must be a non-profit charitable institution

Pursuant to the second requirement under MCL 211.7o(1), the claimant must be a non-profit charitable institution. In determining whether an organization is charitable is to understand the definition of “charity.” The Michigan Supreme Court established the following definition of “charity” as such:

²⁵ *Wexford Medical Center*, 474 Mich at 203. Respondent in its Response, when discussing the charitable exemption from taxation under MCL 211.7o, focuses on the Tribunal decision in *Haslett Manor Adult Foster Care v Meridian Twp*, 7 MTT 614 (1993), instead of the 2006 Michigan Supreme Court Case.

²⁶ *Id* at n. 5, referring to *American Youth Foundation v Benona Twp*, 37 Mich App 722,724 195 NW2d 304 (1972), citing *WHYY v. Glassboro*, 393 US 117, 89 SCt 286, 21 LEd2d 242 (1968).

²⁷ MCL 211.2(2) states: “The 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, any provisions in the charter of any city or village to the contrary notwithstanding.” See also Response at 5: the property “was purchased by Petitioner on January 7, 2016” See also Affidavit at paragraph (“par”) 8.

‘[C]harity . . . is a *gift*, to be applied consistently with existing laws, *for the benefit of an indefinite number of persons*, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works *or otherwise lessening the burdens of government*. (Emphasis supplied.)²⁸

In order to determine whether Petitioner is entitled to a property tax exemption under MCL 211.7o, 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.²⁹ The Court in *Michigan United Conservation Clubs v Lansing Twp* (“MUCC”), 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.”³⁰ In *Michigan Baptist Homes v City of Ann Arbor*, the Michigan Supreme Court stated that “exempt status requires more than a mere showing that services are provided by a nonprofit corporation.”³¹ The Court also stated that to qualify for a charitable or benevolent exemption, the use of the property must “. . . benefit the general public without restriction.”³²

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*, that six factors must be considered in determining whether an entity is a charitable institution for purposes of MCL 211.7o(1). A claimant must meet all six of these tests in order to qualify as a nonprofit charitable institution. A failure to meet any of the six tests disqualifies a claimant from being considered a charitable institution and receiving a property tax exemption under MCL 211.7o(1). The tests are as follows:

- (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

²⁸ *Retirement Homes*, 416 Mich 340 at 348–349, quoting *Jackson v. Phillips*, 96 Mass (14 Allen) 539 (1867) and other cases subsequently adopting the same definition. *Retirement Homes*, 416 Mich App at 348-349 n. 14.

²⁹ See *Michigan United Conservation Clubs v Lansing Township*, 423 Mich 661; 378 NW2d 737 (1985).

³⁰ *Id.* at 673 (emphasis added).

³¹ *Michigan Baptist Homes v City of Ann Arbor*, 396 Mich 660, 670; 242 NW2d 749 (1976).

³² *Id.* at 671.

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.³³

An analysis of whether Petitioner qualifies as a charitable institution requires a discussion of each of these factors.

(1) A “charitable institution” must be a nonprofit institution.

Petitioner has provided a letter from the Internal Revenue Service confirming its status as a tax exempt organization under section 501(c)(3) of the Internal Revenue Code.³⁴ Further Petitioner has provided documentation that it is an Indiana non-profit organization.³⁵ As such, the Tribunal finds this requirement, met.

(2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.

(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.

The Tribunal finds there is overlap, in this matter, between Wexford Factors two and four and, as such, will discuss them together.

Respondent claims that Petitioner does not relieve any governmental burden as required by factor four, “since the government does not provide nor is it required to provide this type of service without remuneration, that is, the State of Michigan provides compensation to state schools for children with special needs.”³⁶ Petitioner contends that it relieves a governmental burden by “(a) bringing autistic youths’ minds under her influence of education; (b) helps to assist autistic youth to establish themselves for life; and, (c) otherwise lessens the burdens of government to care for autistic youth.”³⁷

³³ *Wexford*, 474 Mich at 215.

³⁴ See footnote 22.

³⁵ *Id.*

³⁶ Motion at 9.

³⁷ Response at 10.

Respondent agrees that the state provides, “state” public schools with funding for children with special needs. As such, by privately educating children with autism spectrum disorder, Petitioner relieves the governmental burden of “compensation to state schools for children with special needs.”³⁸

The state of Michigan is required to offer education to all children residing in Michigan, including autistic children.³⁹ A consideration of the State School Aid Act puts forth the “Center Program,” concept which is defined as:

a program operated by a district or by an intermediate district for special education pupils from several districts in programs *for pupils with autism spectrum disorder*, pupils with severe cognitive impairment, pupils with moderate cognitive impairment, pupils with severe multiple impairments, pupils with hearing impairment, pupils with visual impairment, and pupils with physical impairment or other health impairment [Emphasis added].⁴⁰

Further, the Michigan Administrative Rules for Special Education (“MARSE”) provide specific requirements for programs for students with autism spectrum disorder, including dissemination of information to the public about the availability of special education services, classroom size, qualification of paraprofessional staff, and student transportation requirements, among others.⁴¹

At the subject property, Petitioner provides the following behavioral and learning therapy to children with autism:⁴²

ABA Therapy⁴³ – one-on-one learning and behavioral programs that focus on teaching adaptive behaviors, life skills, language, and academic skills;

Age Appropriate Guidance - Social coaching, recreation clubs, and camps for teens and young adults;

³⁸Funding for children with special needs is also provided by the Federal Government under the Individuals with Disabilities Education Improvement Act “IDEA.”

³⁹ See Const 1963, Article VIII, sec. 8, See also MCL 380.1751(1) which states:

The board of a local school district shall provide special education programs and services designed to meet the individual needs of each student with a disability in its district on record under section 1711 for whom an appropriate educational or training program can be provided in accordance with the intermediate school district special education plan. . .

⁴⁰ See MCL 388.1606.

⁴¹ MARSE, R. 340.1758, R. 340.1832. MARSE R. 340.1758 requires a classroom size of not more than five children.

⁴² Services are provided at the subject property to children between 4-7 years-old, typically, but some are older or younger. See Response at 6, Affidavit, par 13.

⁴³ ABA therapy is Applied Behavior Analysis which is the process of studying behavior in order to put into place appropriate behavioral interventions by techniques such as positive reinforcement. See Autism Speaks, <https://www.autismspeaks.org/what-autism/treatment/app>, viewed November 8, 2017.

Behavior Counseling – board certified behavior analysts who work with families, schools and other professionals to create behavior plans, develop skills needed to succeed in school environments, and provide individualized support to help with areas of concern;

Recreational activities;

Social Skills – classes for school-age children teaching basic social skills through role playing, practice and reinforcing positive social interactions.⁴⁴

The Tribunal finds Petitioner does relieve the governmental burden of educating school-age, autistic children by teaching them adaptive behaviors, life skills, language and academic skills, in order to prepare them for transition to public school. Petitioner further relieves the governmental burden of educating autistic children who cannot attend traditional public school or those who need services in addition to traditional public school, such as those provided by Berrien County RESA's⁴⁵ Lighthouse Education Center and off-site classrooms located in local school districts, which compliment traditional classrooms.⁴⁶ While more pertinent to the educational exemption under MCL 211.7n, it may also be noted here, that Petitioner's services would and could be provided by traditional public schools or county programs, if not for Petitioner. The Tribunal finds Petitioner brings hearts or minds under the influence of education which relieves a governmental burden.

The Tribunal further finds Petitioner assists autistic persons to establish themselves for life. Autism is, "a developmental disability that almost always persists for the affected person's lifetime and generally results in a limitation of the person's ability to care for himself, understand others, and express himself, learn, live independently and be economically self-sufficient."⁴⁷ Petitioner provides social coaching for school-age children, teens and young adults with autism. The Center also teaches life skills, language, and adaptive behaviors, which help an autistic person establish himself or herself for life.⁴⁸ In *Karen's Helping Hands, Inc v City of Riverview*, the Court of Appeals found a home where persons with developmental disabilities and mental illness live, helped to establish its residents for life by teaching

⁴⁴ Affidavit at par 11.

⁴⁵ Berrien County Regional Education Service Agency [EducatioService Agency](#)

⁴⁶ See Response at Exhibit 2, Tab 2.

⁴⁷ Affidavit at par 12.

⁴⁸ Affidavit at par 11.

them to prepare their meals, how to do laundry and how to make their beds. The director testified that “the goal [of KHH] is to get [residents] prepared for community so that they can go independent”⁴⁹ Similarly, in this matter, the Center helps its community establish itself for eventual independence, if achievable. Mr. Matthew J. Harrington, President and CEO of Petitioner states, “Many of the children who attend the autism learning center need a combination and sequence of planned and coordinated special care and service that are of lifelong or extended duration.”⁵⁰

With regard to factor two, Respondent contends that Petitioner charges fees for its services and its website application indicates the Center will contact an applicant with private pay options if insurance doesn’t cover ABA Therapy.⁵¹ The Tribunal finds a discussion of private pay options does not preclude reduced price services. In fact, the Tribunal finds Petitioner provides the gift of reduced cost education and assistance in establishing oneself for life to children with autism spectrum disorder. Mr. Harrington put forth in his affidavit “Petitioner charges fees for the services it provides to children with autism but those fees do not cover the entire cost of Petitioner’s services.”⁵² Further, Petitioner funds scholarships “in the range of \$50,000 to \$75,000 annually”⁵³ Finally, to supplement for financial losses due to reduced fees, Petitioner receives tax-deductible donations.⁵⁴ As in *Wexford*, it is clear that Petitioner provides a gift to its applicants and operates chiefly to provide its gift, as there is no other reason put forth for its existence.⁵⁵

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.

Petitioner offers its services to any child with autism spectrum disorder that applies for admission, has a waiting list and admits children on a “first come, first served” basis.⁵⁶ Respondent contends that Petitioner offers its “charity” on a discriminatory basis, because “it is clear that those members of the general public who have been fortunate enough to not be afflicted by a condition addressed by Logan

⁴⁹ *Karen’s Helping Hands, Inc v City of Riverview*, unpublished opinion per curiam of the Court of Appeals, issued April 26, 2011 (Docket No. 295621)

⁵⁰ Affidavit at par 12.

⁵¹ See Motion at 5, Motion Exhibit 3.

⁵² Affidavit at par 20.

⁵³ Affidavit at par 22.

⁵⁴ Affidavit at par 21.

⁵⁵ *Wexford*, 474 Mich at 216.

⁵⁶ Affidavit at par 23.

Community Resources, Inc. will not receive any benefit for the fees that are charged.”⁵⁷ The Court in *Wexford* clearly indicates that “a charitable institution can exist to serve a particular group or type of person”⁵⁸ Here, the group is persons with autism spectrum disorder. Further, the Court in *Harmony Montessori Center v City of Oak Park*,⁵⁹ held that “[t]he consideration discussed in context in *Wexford* was whether the charity’s services—whatever they might be—were available to anyone, in the context ‘of the type and scope of charity it offers.’ ”

Respondent also claims that the Center does not provide its services to the general public without restriction, as some applicants pay for services, while others do not, however, on June 28, 2017, the Michigan Supreme Court clarified factor three of *Wexford*, and as applied to this matter, affirms Petitioner’s contention that its charitable gift is not offered on a discriminatory basis. In *Baruch SLS, Inc v Tittabawassee Twp*⁶⁰ Petitioner appealed the Tribunal’s determination, as affirmed by the Court of Appeals, that it did not qualify as a charitable institution within the meaning of MCL 211.7o and MCL 211.9 because it offered its charity on a discriminatory basis. Petitioner was an adult foster care facility that offered an income-based subsidy to qualifying residents of Stone Crest Assisted Living, provided those residents made at least 24 full monthly payments to petitioner.⁶¹ The Tribunal found Petitioner was not a charitable institution under three of the six *Wexford* factors and the Court of Appeals found Petitioner was not a charitable institution under only factor three because, by limiting the availability of the income based subsidy, petitioner offered its services on a discriminatory basis.

The Supreme Court held that the Tribunal and the Court of Appeals decided this issue on the basis of an incorrect understanding of the third factor in the *Wexford* test and remanded to the Tribunal for proceedings consistent with its opinion. Noting that it has been interpreted incorrectly by the lower courts, as excluding from the definition of charitable institution organizations that charge fees for their services, don’t operate at a loss, or select their beneficiaries using any non-random criteria, the Court clarified that factor three excludes only restrictions or conditions that bear no reasonable relationship to a permissible charitable goal. The Court found beneficiaries have to be selected in some manner, as most

⁵⁷ Motion at 7.

⁵⁸ *Wexford*, 474 Mich at 213.

⁵⁹ *Harmony Montessori Center v City of Oak Park*, unpublished opinion per curiam of the Court of Appeals, issued February 18, 2014 (Docket No. 312856) (quoting *Wexford*, 474 Mich at 213).

⁶⁰ *Baruch SLS, Inc v Tittabawassee Twp*, ___ Mich ___; ___ NW2d ___ (2017) (Docket No. 152047)

⁶¹ *Id* at 3.

organizations cannot serve everyone.⁶² Further, the “reasonable relationship” test is to be construed broadly: “In short, the relationship between the institutions restriction and its charitable goal need not be the most direct or obvious. Any reasonable restriction that is implemented to further a charitable goal that passes factor four is acceptable.”⁶³ The Court acknowledged the deferential nature of this test, but found it warranted, absent any indication in the statute as to the restrictions a charity may or may not place on its services. The Tribunal finds the only restrictions put forth by Petitioner, are that the individual applicant have an autism diagnosis and be one of the first who applied, of those wishing service. Any financial scholarship restrictions would bear a reasonable relationship to its permissible charitable goal, as put forth in the discussion of Wexford factors 2 and 4, above.⁶⁴

(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.

Respondent contends that Petitioner is not organized for charity as it charges a fee for its services.⁶⁵ The Tribunal finds under *Wexford*, a charitable institution may charge for its services, as long as the charges are not more than what is needed for its successful maintenance. Here, there is no allegation from either party that this factor is not met. In fact, Mr. Harrington, states, “Petitioner arranges it finances so that it breaks even and does not make a profit.”⁶⁶ Further, as noted above, “Petitioner charges fees for the services it provides to children with autism but those fees do not cover the entire cost of Petitioner’s services.”⁶⁷

(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.

This factor eliminates any financial threshold of charity in order to qualify as a charitable institution. If the Tribunal finds the Center to be a charitable institution, the amount of charity it gives is not relevant.

⁶² *Id* at 9.

⁶³ *Id* at 13.

⁶⁴ *Id* at 11.

⁶⁵ Motion at 5.

⁶⁶ Affidavit at par 19.

⁶⁷ Affidavit at par 20.

The exemption exists only when the building and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated

The last element under Section 211.7o(1) is whether the subject property is used solely for the charitable purposes for which Petitioner is organized. There is no allegation by either party that the property is utilized other than for the purpose of educating, and aiding in establishment for life, autistic children, teens and young adults, by teaching them adaptive behaviors, life skills, language and academic skills. The Tribunal finds the property is occupied by Petitioner for the purpose it was incorporated.

As Petitioner has met all the requirements under MCL 211.7o(1), the Tribunal finds it is exempt from the payment of the property tax for the tax year at issue, as a charitable institution. The Tribunal notes that Petitioner asserts its property is exempt from the payment of property tax pursuant to MCL 211.7o(8) and MCL 211.7n, and as such, the Tribunal will provide a brief discussion of the applicability of those exemption statutes to the property at hand, even though it has already found the property exempt under MCL 211.7o(1).

Charitable Exemption Pursuant to MCL 211.7o(8)

MCL 211.7o(8) states, in pertinent part,

Real and personal property owned and occupied by a nonprofit corporation that meets all of the following conditions is exempt from the collection of taxes under this act:

(a) The nonprofit corporation is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501.

(b) The nonprofit corporation meets 1 of the following conditions:

(ii) Provides housing, rehabilitation services, diagnostic services, medical services, or therapeutic services to 1 or more disabled persons. As used in this subparagraph, "disabled person" means that term as defined in section 7d.

(c) The nonprofit corporation meets either of the following conditions:

(i) The real and personal property of the nonprofit corporation was being treated as exempt from the collection of all taxes under this act on the effective date of the amendatory act that added this subsection.

(ii) The real and personal property of the nonprofit corporation had been treated as exempt from the collection of all taxes under this act on December 31, 2004 and there

has been no transfer of ownership of that property during the period of time beginning the last day the property was treated as exempt until the effective date of the amendatory act that added this subsection. As used in this sub-subparagraph, "transfer of ownership" means that term as defined in section 27a.

Petitioner contends that it meets all the necessary requirements for its property to receive an exemption from the payment of property tax under MCL 211.7o(8), sections (a),(b) and (c).

(a) The nonprofit corporation is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501.

This factor has been established above.

(b) The nonprofit corporation meets 1 of the following conditions:

(ii) Provides housing, rehabilitation services, diagnostic services, medical services, or therapeutic services to 1 or more disabled persons. As used in this subparagraph, "disabled person" means that term as defined in section 7d.

Petitioner contends that it provides rehabilitation and therapeutic services to disabled persons, which the Tribunal agrees is probable.⁶⁸ However, Petitioner has not provided any definition or rehabilitation or therapeutic services, and as such, the Tribunal is left guessing which specific services it provides meet those criteria. The Tribunal does find that children with autism spectrum disorder may meet the definition of "disabled person" under section 7d as Petitioner noted, "the Michigan Department of Health and Human Services cites autism as a disability and established the Michigan Autism Program in 2013."⁶⁹

(c) The nonprofit corporation meets either of the following conditions:

(i) The real and personal property of the nonprofit corporation was being treated as exempt from the collection of all taxes under this act on the effective date of the amendatory act that added this subsection.

(ii) The real and personal property of the nonprofit corporation had been treated as exempt from the collection of all taxes under this act on December 31, 2004 and there has been no transfer of ownership of that property during the period of time beginning the last day the property was treated as exempt until the effective date of the amendatory

⁶⁸ Response at 14.

⁶⁹ See Response at 13, N. 3.

act that added this subsection. As used in this sub-subparagraph, "transfer of ownership" means that term as defined in section 27a. [Emphasis added.]

Petitioner contends in a one sentence explanation, "The Subject Property was previously exempt as a school, as can be seen from the tax assessment attached to the Petition."⁷⁰ The Tribunal notes there is a Notice of Assessment, Taxable Valuation, and Property Classification, attached to the Petition, which puts forth taxable value of \$0 in 2016, however, Petitioner purchased the property on January 7, 2016, which makes it the entity responsible for the payment of tax for the 2017 tax year, the tax year in question. As stated above, it is required that [t]he property of the non-profit corporation was being treated as exempt . . . on the effective date of the amendatory act that added this subsection." No information was provided that the property was exempt on January 10, 2007, the effective date of the amendatory act.⁷¹ No information was provided that the property was exempt from taxation on December 31, 2004, as required by section (c)(ii), above. Further, the subject property, *the* property belonging to *the* non-profit organization, was not, as noted above, acquired until 2016. The Tribunal finds Petitioner has not proven by a preponderance of the evidence that the subject property is exempt from taxation pursuant to MCL 211.7o(8).

Educational Exemption Pursuant to MCL 211.7n

MCL 211.7n provides, in part:

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

In *Engineering Society of Detroit v Detroit*,⁷² the Court set forth three criteria that must be met in order to qualify for an exemption as an educational institution under MCL 211.7n:

1. The real estate must be owned and occupied by the exemption claimant;
2. The exemption claimant must be a [nonprofit] . . . educational . . . institution; [and]
3. The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.⁷³

⁷⁰ Response at 12.

⁷¹ See P.A. 681 of 2006.

⁷² *Engineering Society of Detroit v Detroit*,⁷² 308 Mich 539, 550; 14 NW2d 79 (1944).

⁷³ The requirement that the claimant be incorporated under Michigan law is no longer valid, having been found to be unconstitutional, as it denied equal protection to institutions registered out-of-state. See

The court in *Ladies Literary Club v Grand Rapids*,⁷⁴ specified two requirements that must be met in order for an organization to qualify for an educational exemption from taxation:

1. An institution seeking an educational exemption must fit into the general scheme of education provided by the state and supported by public taxation.
2. The institution must contribute substantially to the relief of the educational burden of government.

In order to make a substantial contribution, the institution must show that “if [it] were not in existence, then . . . a substantial portion of the student body who now attend that school [would and could] instead attend a State-supported [school.]”⁷⁵

The real estate must be owned and occupied by the exemption claimant.

The exemption claimant must be a nonprofit educational institution

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.

These factors have been established in the discussion regarding qualification for a charitable exemption pursuant to MCL 211.7o(1), above.

An institution seeking an educational exemption must fit into the general scheme of education provided by the state and supported by public taxation.

Again, as noted above, the Tribunal finds the state is required to educate children with autism spectrum disorder. Specifically, in Sodus Township, such education is provided through traditional public school, public school in addition to off-site classrooms located in local school districts or through Berrien County RESA.⁷⁶

The institution must contribute substantially to the relief of the educational burden of government.

As noted above, in order to make a substantial contribution, the institution must show that if it did not exist, a substantial portion of the student body who now attend the Center would and could instead

Inc v Battle Creek, 224 Mich App 608, 612; 569 NW2d 676 (1997), citing *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp*, 186 Mich App 511, 515; 465 NW2d 14 (1990). See also footnote 25.

⁷⁴ *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 755-756; 298 NW2d 422 (1980).

⁷⁵ *David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968).

⁷⁶ See footnote 46.

attend a public school. The Tribunal finds the Center prepares school-age, and younger, children for traditional public school, is an alternative to public school, and also educates older children.⁷⁷ Mr. Harrington in his affidavit states, “Petitioner’s Autism Learning Center serves more children with autism than the Lighthouse Learning Center.”⁷⁸ Further, a traditional public school classroom for children with autism spectrum disorder is limited to five children per one instructor.⁷⁹ The Tribunal finds that Petitioner relieves a substantial burden of government as if the Center did not exist, its students would and could attend, as noted above, state-funded, traditional public schools, traditional public schools with additional off-campus instruction, and/or the Lighthouse Learning Center for students with the most need.

Exemption Pursuant to MCL 211.9(1)(a).

In its Petition, Petitioner alleges the subject property is exempt from taxation under MCL 211.9(1)(a) which states, in pertinent part:

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. This exemption does not apply to secret or fraternal societies, but the personal property of all charitable homes of secret or fraternal societies and nonprofit corporations that own and operate facilities for the aged and chronically ill in which the net income from the operation of the nonprofit corporations or secret or fraternal societies does not inure to the benefit of a person other than the residents is exempt. [Emphasis added.]

The Court in *SBC Health Midwest, Inc. v City of Kentwood*,⁸⁰ found pursuant to the above statute, the personal property of a for-profit educational institution was exempt from taxation. In this matter, Petitioner is a non-profit organization, as such its personal property is governed by MCL 211.7o and/or MCL 211.7n.

Conclusion

Given the above, the Tribunal finds Respondent’s Motion for Summary Disposition is denied. Further, pursuant to MCR 2.116 (I)(2), the Tribunal finds that Petitioner, the opposing party, rather than

⁷⁷ Special education in Michigan public schools is available from early school age to not more than 25 years of age as of September 1st of any school year. A student who turns 26 after September 1st is eligible for special education services until the end of the next school year. See MARSE R. 340.1702.

⁷⁸Affidavit at par. 17.

⁷⁹ MARSE R. 340.1758. On its opening day, the Center served 27 children from ages 2 to 17 years-old. See Petition exhibit entitled, “Autism Learning Center Opens in Benton Harbor.”

⁸⁰ *SBC Health Midwest, Inc. v City of Kentwood*, 500 Mich 65; 894 NW2d 535 (2017).

the moving party, is entitled to judgement in its favor. As such, the Tribunal finds the subject property is exempt from taxation for the 2017 tax year and closes the case.

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Summary Judgment in favor of Petitioner is GRANTED pursuant to MCL 2.116 (I)(2). As such, the property is exempt from taxation for the 2017 tax year.

IT IS FURTHER 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 true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.⁸¹ 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 Final Opinion and Judgment. 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 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, 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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, and (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

⁸¹ See MCL 205.755.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.⁸² Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.⁸³ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.⁸⁴ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁸⁵

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."⁸⁶ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁸⁷ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁸⁸

By Preeti Gadola

Entered: November 22, 2017

⁸² See TTR 261 and 257.

⁸³ See TTR 217 and 267.

⁸⁴ See TTR 261 and 225.

⁸⁵ See TTR 261 and 257.

⁸⁶ See MCL 205.753 and MCR 7.204.

⁸⁷ See TTR 213.

⁸⁸ See TTR 217 and 267.