

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

Telluride Association, Inc.,  
Petitioner,

v

MTT Docket No. 306817

City of Ann Arbor,  
Respondent.

Tribunal Judge Presiding  
Patricia L. Halm

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

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT  
PURSUANT TO MCR 2.116(I)(2)

The issue to be resolved in this Motion for Summary Disposition is whether property owned by Telluride Association Inc., a New York nonprofit corporation (Petitioner), is exempt from ad valorem property taxes as a charitable institution or an educational institution, or both. It is Petitioner's contention that the property at issue qualifies for an exemption under Sections 7n, 7o and 9 of the General Property Tax Act (GPTA), being MCL 211.7n, MCL 211.7o and MCL 211.9, and that it has been wrongfully assessed by the City of Ann Arbor (Respondent).

The property at issue (the subject property) is known as the "Telluride House" and is utilized by Petitioner to house students attending the University of Michigan. The subject property consists of one parcel of real property, Parcel No. 09-09-33-108-004, and one parcel of personal property, Parcel No. 09-90-00-071-586.

Petitioner filed this motion for summary disposition under MCR 2.1116(C)(10), asserting that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. At Petitioner's request, the Tribunal heard oral argument on the motion. Based upon the findings of fact and conclusions of law set forth herein, the Tribunal finds that the subject

property is not exempt under the GPTA. As such, Petitioner’s Motion for Summary Disposition is denied.

Moreover, while the Tribunal agrees that there are no genuine issues of material fact, the Tribunal finds that Respondent is entitled to summary disposition as a matter of law. Given this, Respondent is granted summary disposition pursuant to MCR 2.116(I)(2).

The subject properties’ true cash values (TCV), state equalized values (SEV), and taxable values (TV) as presented by the parties are:

**Parcel Number: 09-09-33-108-004 (real property)**

Year	R’s TCV	P’s TCV	R’s SEV/AV	P’s SEV/AV	R’s TV	P’s TV
2004	\$1,100,000	\$1,100,000	\$550,000	\$550,000	\$434,603	\$0
2005	\$1,558,400	\$1,558,400	\$779,200	\$787,500	\$444,598	\$0
2006	\$1,606,600	\$1,606,600	\$803,300	\$803,300	\$459,269	\$0

**Parcel Number: 09-90-00-071-586 (personal property)**

Year	R’s TCV	P’s TCV	R’s SEV/AV	P’s SEV/AV	R’s TV	P’s TV
2004	\$110,400	\$110,400	\$55,200	\$55,200	\$55,200	\$0
2005	\$109,400	\$109,400	\$54,700	\$54,700	\$54,700	\$0
2006	\$106,400	\$106,400	\$53,200	\$53,200	\$53,200	\$0

FINAL VALUES

The subject properties’ true cash values (TCV), state equalized values (SEV), and taxable values (TV) as determined by the Tribunal are:

**Parcel Number: 09-09-33-108-004 (real property)**

Year	TCV	SEV	TV
2004	\$1,100,000	\$550,000	\$434,603
2005	\$1,558,400	\$779,200	\$444,598
2006	\$1,606,600	\$803,300	\$459,269

**Parcel Number: 09-90-00-071-586 (personal property)**

Year	TCV	SEV	TV
2004	\$110,400	\$55,200	\$55,200
2005	\$109,400	\$54,700	\$54,700
2006	\$106,400	\$53,200	\$53,200

PETITIONER’S MOTION FOR SUMMARY DISPOSITION

Petitioner states that it is a New York non-profit corporation and that it “is a nonprofit corporation within the meaning of Section 501(c)(3) of the Internal Revenue Code (26 USC § 501(c)(3)).” (Petitioner’s Brief, p1) According to Petitioner:

Telluride was organized to create and foster educational communities that rely upon democratic participation. It has a long relationship with Deep Springs College, as both institutions were founded by L.L. Nunn, for the same fundamental reason: “to bring together and support students in their pursuit of intellectual interchange, dedication to improving public life, and commitment to self-governance.” Telluride’s Restated Certificate of Incorporation states:

[T]he Corporation is organized to promote the highest well being by broadening the field of knowledge and increasing the adoption as the rule of conduct of those truths from which flows individual freedom as the result of self-government in harmony with the Creator.

In furtherance of its corporate purposes, Telluride provides, among other things, free room and board to undergraduate and graduate students at Universities where Telluride maintains and operates a Branch, and it conducts summer educational programs for free for high school juniors [Telluride Association Summer Programs] (TASP) and for high school sophomores [Telluride Association Sophomore Seminars] (TASS). . . .

Telluride’s Constitution and Bylaws authorize it to, among other things, “make alliances and establish Branches with universities and other educational institutions.” Telluride currently operates two such Branches, one at Cornell University in Ithaca, New York, and the other at the University of Michigan. . . .

The University of Michigan Branch of Telluride (MBTA) was formed in 2000. The Bylaws state its mission as follows:

Michigan Branch of Telluride Association shall have as its mission an exploration of democratic living and the development of

intellectual life, practical work, and public service; the Branch shall express its mission through internal Branch activities and sustained projects in its surrounding community that explore the connections between intellectual inquiry and community service. (Citations omitted.) (Petitioner's Brief, pp1-2)

To that end, Petitioner offers full room and board "scholarships" to between 20 and 30 University of Michigan undergraduate and graduate students each year. If the scholarship recipient meets Petitioner's minimum requirements, the scholarship is renewable for up to five years. These requirements are:

1. The recipient will be registered as a full-time student in good standing at the University, actively pursuing an undergraduate or graduate degree.
2. The recipient will obey all applicable laws; adhere to the University's rules, regulations, and code of conduct; and comply with applicable Telluride Association rules and policies.
3. The recipient will maintain a Grade point average of "B" (3.0) or better, and will complete at least three-fourths of all courses taken, in each academic term.
4. The recipient will attend at least 80% of formal Branch events. . . .
5. The recipient will complete, in a timely fashion, the quota of TASS and/or TASP application reading assigned by Telluride Association and the Branch Applications Officers.
6. The recipient will satisfy standards of conduct and participation in both formal and informal Branch life, as set by the Branch in the normal course of its functions as a self-governing community. (Petitioner's Brief, pp3-4)

Petitioner recruits from a wide range of schools and "works closely with the University of Michigan to develop a list of applicants to the University who might be interested in applying for MBTA membership and the University provides such potential applicants information about the MBTA." (Petitioner's Brief, p4) "The students who apply for this scholarship tend to be those who are academically inclined and genuinely interested in gaining a hands-on experience in community living and self-governance." (Petitioner's Brief, p4) Petitioner states that it does not

recruit students based upon GPA scores. Instead, its application process relies heavily on required essays. According to its Scholarship Application, five essays are required. The questions/issues to be discussed in these essays are:

1. The applicant's educational and career plans, including any factors that have influenced the applicant's decisions in this regard.
2. A book, film, or other work of art that affected the applicant's thinking.
3. "How will the fact that Telluride House is self-governing and democratic affect house life?"
4. An annual project that could be undertaken by the members and how it would be conducted and implemented.
5. A problem or topic of special interest to the applicant.

Students and members of the MBTA are required to participate in "externally directed annual projects which link practical work in the community with theoretical and academic inquiry." (Petitioner's Brief, p4) At the MBTA, the projects emphasize community service. Additionally, students and members participate in a public speaking program. Telluride also sponsors a lecture series "that brings prominent alumni of Telluride to speak to the University of Michigan community." (Petitioner's Brief, p5) The series is open to the public and is free of charge.

In addition to the students who live at the subject property, each year a small number of faculty members are recruited to reside there. "The presences of Faculty Fellows allows students to engage with prominent scholars during their day-to-day activities" at the subject property. (Brief, p5)

Petitioner explained that one of the ways in which it works with and supports the University of Michigan is through the University's College of Literature, Science and the Arts (LSA) programs known as "Michigan Learning Communities," or MLC. "These programs provide the University's students with the personal attention, community environment and leadership opportunities of a small college environment with the resources of a large state University." (Petitioner's Brief, pp5-6)

Petitioner also conducts summer programs for high school sophomores and juniors. These programs are known as the "Telluride Association Sophomore Seminars," or TASS, and the "Telluride Association Summer Programs," or TASP, respectively. Telluride pays all of the cost of these programs, including tuition, books, room and board, field trips and facility fees. If needed, Telluride will also pay for a student's transportation costs.

Petitioner argues that it is a charitable institution under MCL 211.7o as it meets the test set forth in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 74 (2006).

Specifically, this test provides that:

- (1) A "charitable institution" must be a nonprofit institution.
- (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
- (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
- (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.

- (6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. (*Id.*, p216)

According to Petitioner:

Telluride was organized to create and foster educational communities that rely upon democratic participation. Its fundamental purpose is to “bring together and support students in their pursuit for intellectual interchange, dedication to improving public life, and commitment to self-governance.”. . .As part of Telluride’s education and housing programs, it provides a benefit to the University of Michigan community, the City of Ann Arbor community, the student members of Telluride U of M Student House, the students participating in TASP and TASS and the general public at large. By way of example, it does so in the following ways:

- Provides student housing at no cost to either the State of Michigan, the University of Michigan or the individual students.
- Offers a diverse learning-centered residential community.
- Facilitates its students’ transformation and enriches their education.
- Ensures quality housing and educational programs and services.
- Furnishes its lecture Series for the benefit of the entire community.
- Partners with the University of Michigan Office of Undergraduate Recruitment in sharing resources to meet both the needs of Telluride and the University of Michigan.
- Complements the University of Michigan’s MLC program by offering a residential program that promotes the University’s goals of providing its students with directed personal attention, community enrichment and leadership opportunities.
- Benefits the Ann Arbor community at large through its annual public service projects.
- Promotes and advances knowledge and education to university students, high school students participating in TASP and TASS, beneficiaries of Telluride’s community educational programs and the public at large through Telluride’s lecture series. (Petitioner’s Brief, pp17-18)

Given this, Petitioner argues that:

. . .there can be no dispute that Telluride’s educational and charitable activities benefit not just its student residents, but an indefinite number of people by bringing “their minds or hearts under the influence of education. . .or otherwise lessening the burdens of government” by complementing and/or augmenting the University of Michigan’s housing and educational programs and thus confers a gift to the public. (Petitioner’s Brief, p18)

Petitioner also argues that it is an educational institution under MCL 211.7n because its programs fit into the general education scheme.

The Michigan constitution requires that the Legislature provide for the support of institutions of higher education. 1963 Const, art VIII, § 4. The University of Michigan is a state-supported institution of higher learning within the meaning of 1963 Const, art VIII, § 4. Telluride's provision of student housing together with its educational programs for its students and public at large serve as an integral part of the University of Michigan's MLC program. Telluride's partnership with the University of Michigan's Office of Undergraduate and the sharing of resources aids the university in its student housing and recruitment efforts. In all of these respects and others, Telluride substantially contributes to relieving a burden of government. Were it not for Telluride's efforts, the burden imposed on the state government would be appreciably increased. (Petitioner's Brief, pp19-20)

For these reasons, Petitioner argues that the subject property is exempt from property taxes under MCL 211.7o and MCL 211.7n, and that it is entitled to summary disposition pursuant to MCR 2.116(c)(10). In addition to *Wexford, supra*, Petitioner relies on the following cases in support of its position: *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709; 346 NW2d 862 (1984); *Kalamazoo Nature Center v Cooper Township*, 104 Mich App 657; 305 NW2d 283 (1981); *Edsel & Eleanor Ford House v Village of Grosse Pointe Shores*, 134 Mich App 448; 350 NW2d 894 (1984); *Association of Little Friends v Escanaba*, 138 Mich App 302; 360 NW2d 602 (1989); *Moorland Township v Ravenna Conservation Club*, 183 Mich App 451; 455 NW2d 331 (1990); and *Engineering Society of Detroit v Detroit*, 308 Mich 539; 14 NW2d 79 (1944).

Petitioner submitted the following exhibits and affidavits:

1. Certificate of Merger of Telluride Association Incorporated into Telluride Corporation.
2. Restated Certificate of Incorporation of Telluride Association, Inc.
3. Telluride Association Rules and Procedures.
4. Telluride Association Constitution and By-Laws.

5. Charter of the Michigan Branch of Telluride Association.
6. IRS letter dated May 17, 2001, confirming Telluride Corporation's exempt status under Section 501(c)(3) of the Internal Revenue Code.
7. Telluride Association, Inc.'s Income Tax Form 990 for the 2002 tax year.
8. Warranty Deed transferring ownership of the subject property to the Custodians of Telluride Association, dated May 13, 1999.
9. Quit Claim Deed transferring ownership of the subject property to Petitioner, dated June 1, 2003.
10. Property Transfer Affidavit indicating transfer of ownership of the subject property to Petitioner, dated June 1, 2003.
11. Copies of several pages from Petitioner's website.
12. A letter dated December 2, 2006, from the Associate Dean for Undergraduate and Graduate Education for the University of Michigan, explaining Petitioner's relationship to the University of Michigan and the College of Literature, Science and the Arts.
13. The Community Service Project Proposal for 2003-2004.
14. The Community Service Project Descriptions for 2004-2005.
15. The Community Service House Project Descriptions for 2005-2006.
16. TASS Brochure, 2006.
17. Scholarship for TASS Student Flyer.
18. The property record cards for the Subject Property.
19. The Michigan Branch of Telluride Association Scholarship Application (Spring Cycle).
20. A copy of the deposition of Mr. David Petrak, taken May 11, 2006.
21. A copy of the deposition of Mr. David Petrak, taken May 16, 2006.

22. An affidavit of Ms. Shannon Saksewski, dated November 30, 2006.
23. An affidavit of Ms. Shannon Saksewski, dated March 13, 2007.
24. An affidavit of Ms. Rebecca Carter, dated November 30, 2006.
25. An affidavit of Mr. Josh Smith, dated November 30, 2006.

### RESPONDENT'S RESPONSE

Respondent asserts that Petitioner has not met its burden of proof and requests that it be granted summary disposition under MCR 2.116(I)(2). Like Petitioner, Respondent relies on *Wexford, supra*. “In *Wexford*, the Court reiterated that one ‘indispensable principle is that the organization must offer its charitable deeds to **benefit people who need the type of charity** being offered.” (Emphasis added by Respondent.) (*Id.*, p213) (Respondent’s Brief, pp9-10)

While Respondent admits that Petitioner is a non-profit institution, Respondent asserts that Petitioner does not meet the third and fourth tests as set forth in *Wexford*. As to the third test:

[T]he Supreme Court found the medical clinic to be non-discriminatory, based on the following findings:

Petitioner has a charity care program that offers free and reduced-cost medical care to the indigent with no restrictions. It operates under an open-access policy under which it accepts any patient who walks through its doors, with preferential treatment given to no one. *Wexford, supra*, at 216. (Respondent’s Brief, p11)

In this case, Respondent argues that:

Petitioner’s process for selecting whom to award a scholarship turns on Petitioner’s own evaluation of essays submitted by the applicant. Selection does not turn on whether the applicant needs assistance with paying room and board. Petitioner solicits no financial information from the applicant. . .Petitioner clarifies that the requirements it sets for a student to obtain a scholarship are to ensure that “promising students” are inclined to apply. . .Petitioner further stresses that it does not recruit U-M students who “are simply looking for a place to live.” Rather, Petitioner’s goal is to find students whose essays reflect values that suggest they “will likely be participatory branch members who will contribute to house life and community service.” *Id.* (Respondent’s Brief, p13)

Respondent argues that Petitioner uses the same discriminatory practice in selecting students for its TASS and TASP programs. Because “Petitioner doles out its alleged charity by discriminating between U-M students on factors other than need for assistance with paying room and board,” it does not meet the third *Wexford* test. (Respondent’s Brief, p14)

Respondent asserts that Petitioner does not meet the fourth *Wexford* test, namely that it lessens the burden of government, because “no law requires either the University of Michigan or the State of Michigan to provide room and board for U-M students.” (Respondent’s Brief, p11) Further, Respondent argues that providing room and board to those “who do not necessarily have a financial need to begin with, provides no assistance to the government in maintaining the U-M.” (Respondent’s Brief, p12) This is even less of a benefit given that the University of Michigan does not require its students to live in University housing.

Respondent also asserts that:

Petitioner’s claim that it charitably lightens a governmental burden by “bringing people’s minds or hearts under the influence of education” holds no water, in light of the fact that the students who receive Petitioner’s room and board scholarship have already previously decided they want to attend the U-M. That is, the “minds and hearts” of Petitioner’s beneficiaries are “under the influence of education” well before Petitioner grants it scholarship. (Respondent’s Brief, p12)

Finally, as to Petitioner’s claim of exemption as an educational institution under MCL 211.7n, Respondent argues that Petitioner does not qualify for the exemption because it does not fit “into the general scheme of education provided by the State and supported by public taxation under the tax laws.” *Detroit v Detroit Commercial College*, 322 Mich 142, 153; 33 NW2d 737 (1948).

Respondent submitted the following exhibits:

1. Housing rate information for the University of Michigan.
2. University of Michigan housing 2004-05 Budget Totals.

3. FAQ's regarding undergraduate housing at the University of Michigan.
4. The Michigan Branch of Telluride Association Scholarship Application (Spring Cycle).
5. Various pages from Petitioner's website.
6. Telluride Association Constitution and By-laws.
7. University of Michigan Housing Mission Statement.
8. Restated Certificate of Incorporation of Telluride Association, Inc.
9. Certificate of Compliance and Occupancy for the subject property.
10. Housing Inspection Report for the subject property.

#### FINDINGS OF FACT

The Tribunal makes the following findings of fact:

1. This appeal involves two parcels of property, one of which is real property, Parcel No. 09-09-33-108-004, and one of which is personal property, Parcel No. 09-90-00-071-586 (the subject property).
2. The subject property is located at 1735 Washtenaw Avenue, Ann Arbor, Michigan 48104.
3. Petitioner is a New York nonprofit corporation whose principal office is located at 217 West Avenue, Ithaca, New York 14850.
4. Petitioner is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, as amended.
5. At all times pertinent to this appeal, Petitioner owned the subject property.
6. Petitioner provides free room and board "scholarships" to 20 to 30 University of Michigan undergraduate and graduate students each year.

7. Telluride sponsors an annual service project which is organized and run by Telluride students and overseen by the Association faculty. The projects are fully funded by Petitioner.
8. Petitioner does not promote any particular political or religious viewpoint, nor does it discriminate on the basis of race, color, religion, gender, ethnicity, or financial ability.
9. Once awarded a scholarship, Petitioner's Rules and Procedures require that the student meet certain requirements to retain that scholarship. The rules are as follows:
  - a. Recipient will be registered as a full-time student in good standing at the University, actively pursuing an undergraduate or graduate degree;
  - b. Recipient will obey all applicable laws; adhere to the University's rules, regulations, and code of conduct; and comply with applicable Telluride Association rules and policies;
  - c. Recipient will maintain a Grade Point Average of "B" (3.0) or better, and will complete at least three-fourths of all courses taken, in each academic term;
  - d. Recipient will attend at least 80% of formal Branch events;
  - e. Recipient will complete, in a timely fashion, the quota of TASS and/or TASP application reading as assigned by Telluride Association and the Branch Application Officers; and
  - f. Recipient will satisfy standards of conduct and participation in both formal and informal Branch life, as set by the Branch in the normal course of its functions as a self-governing community.
10. Petitioner has two summer programs: Telluride Association Summer Programs (TASP) for high school juniors and Telluride Association Sophomore Seminars (TASS) for high school sophomores. Petitioner provides free room and board to these students for the duration of the program. Financial aid is available for students with an inability to pay for transportation costs, and stipends of up to \$500 are available to replace summer work earning for students who would otherwise not attend because of work commitments.

11. The purpose of the TASP is stated as follows in Petitioner's Rules and Procedures:

[P]romote independence of thought and maturity of judgment in those participating by presenting a plan of study which is unified, distinctive and adjusted to the interests of high school juniors.
  
12. The purpose of the TASS program is set out in Petitioner's Rules and Procedures as follows:

[T]o promote intellectual rigor, interest in African American studies and the studies of other minority cultures, group living, and community service. At least one TASS shall incorporate a demanding seminar focusing on African American studies; where possible, at least one of the remaining seminars shall have as its focus a selection from a broader ethnic studies curriculum. All seminars shall incorporate a thoughtful group-living environment in which participants explore the principles and practice of self-government and a community service program.
  
13. Petitioner is listed as a Michigan Learning Community (MLC) on the University of Michigan's Housing website.

#### MOTIONS FOR SUMMARY DISPOSITION

In the instant case, Petitioner filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(10), which provides the following ground 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 1111(4).

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. (Citations omitted.) (*Id.* at 361-363)

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).

#### CONCLUSIONS OF LAW

The general property tax act provides that “all property, real and personal, within the jurisdiction of this state, **not expressly exempted**, shall be subject to taxation.” MCL 211.1. (Emphasis added.) Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 348; 330 NW2d 682 (1982).

The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:

[I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and **an alleged grant of exemption will be strictly construed** and cannot be made out by inference or implication but **must be beyond reasonable doubt**. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. *Michigan Bell Telephone Company v Department of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, Taxation (4<sup>th</sup> ed), §672, p 1403.

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax. (*Id.*, p207)

It is also well settled that a petitioner seeking a tax exemption bears the burden of proving that it is entitled to the exemption. The Michigan Court of Appeals, in *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002), discussed Justice Cooley's treatise on taxation and held that:

[T]he **beyond a reasonable doubt** standard applies only when a petitioner. . . attempts to establish a class of exemptions; the **preponderance of the evidence** standard applies to a petitioner's attempts to establish membership in an already exempt class. (Emphasis added.) (*Id.*, pp494-495)

In the instant case, Petitioner asserts that the subject property is exempt from property taxes because Petitioner is a charitable institution (MCL 211.7o) and because it is an educational

institution (MCL 211.7n). Both charitable and educational institutions have been recognized as an exempt class. Because Petitioner is attempting to establish membership in each class, the preponderance of evidence standard applies.

#### Charitable Exemption

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

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

An exemption for personal property owned and occupied by nonprofit charitable and educational institutions is also found in MCL 211.9, which states in pertinent part:

(1) The following personal property. . .is exempt from taxation:

(a) The personal property of charitable, educational, and scientific institutions incorporated under the laws of this state. 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.

There is no dispute that Petitioner owns the subject property. However, given the decision reached by the Michigan Supreme Court in *Liberty Hill Housing Corporation v City of Livonia*, 480 Mich 44; 746 NW2d 282 (2008), it was unclear whether Petitioner actually “occupied” the subject property. In *Liberty Hill*, the petitioner leased housing to disabled and low-income people. Thus, the question arose as to whether the petitioner occupied the subject property as contemplated by the statute. In addressing this issue, the Court held “that to occupy property under MCL 211.7o(1), the charitable institution must at a minimum have a regular physical presence on the property.” (*Id.*, p58)

Because the information initially provided was insufficient, the parties were ordered to file Briefs addressing this issue. In its Brief, Petitioner states that it “occupies the property by maintaining offices at the Subject Property and by a Telluride board member residing at the Subject Property.” (Petitioner’s Supplemental Brief, p17) Petitioner supported this statement by filing three affidavits, one of which was that of the Board member who resides at the subject property. Thereafter, Petitioner submitted a second affidavit from its Michigan Program Director. In this affidavit, the Director states that Petitioner’s Michigan corporate office is located on the first floor of the subject property and that this office is regularly utilized by the Director and other staff members. Information provided by Respondent confirms that there is an office located on the first floor. Given this, the Tribunal is satisfied that Petitioner occupies the subject property and that it occupies the property solely for the purpose for which it was incorporated.

Having reached these conclusions, the remaining issue is whether Petitioner is a nonprofit charitable institution. As discussed by both parties, in 2006 the Michigan Supreme Court issued its decision in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), a case wherein the petitioner requested a charitable exemption under MCL 211.7o. In that case, the Court was to “decide precisely how, in the absence of a statutory yardstick, we should measure whether an institution is a ‘charitable institution’ when it performs some level of charitable work.” (*Id.*, p202) In arriving at its decision, the Court first examined the definition of “charitable institution.” The Court reiterated the following foundational principle:

It is not enough, in order to exempt such associations from taxation, that one of the direct or indirect purposes or results is benevolence, charity, education, or the promotion of science. They must be organized chiefly, if not solely, for one or more of these objects. (*Id.*, p205)

The Court also reiterated the definition of charity set forth in *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340; 330 NW2d 682 (1982), stating that this is:

. . . what a claimant must show to be granted a tax exemption as a charitable institution:

[Charity] . . . [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. (*Wexford*, p214)

After a thorough review of previous decisions dealing with charitable exemptions, the *Wexford* Court concluded that the following factors must be considered when determining whether an institution is a “charitable institution” under MCL 211.7o and MCL 211.9:

- (1) A “charitable institution” must be a nonprofit institution.
- (2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.
- (3) A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
- (4) A “charitable institution” brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. (*Id.*, p215)

In applying these factors to the case at hand, there is no dispute that Petitioner is a nonprofit institution and, as such, satisfies the first factor. To determine whether Petitioner satisfies the second factor, it is helpful to review the factor's origin. According to *Wexford, supra*, this factor was derived from the Court's decision in *Attorney General v Common Council of Detroit*, 113 Mich 388; 71 NW 632 (1987), wherein the Court set forth the following foundational principle: "It is not enough, in order to exempt such associations from taxation, that one of the direct or indirect purposes or results is benevolence, charity, education, or the promotion of science. They must be organized chiefly, if not solely, for one or more of these objects." (*Wexford*, p205)

To determine whether the second factor is met, a review of a petitioner's organizational documents is required. "[I]n determining the true purpose of the plaintiff for owning and maintaining the property we must not overlook, but rather be largely governed by the purposes in its Articles for its incorporation." *Gull Lake Bible Conference Association v Township of Ross*, 351 Mich 269, 275; 88 NW2d 264 (1958). In pertinent part, Petitioner's Restated Certificate of Incorporation provides that:

The Corporation is organized exclusively for one or more of the following purposes: charitable, scientific, literary, or educational purposes, as specified in Section 501(c)(3) of the Internal Revenue Code. . .More specifically, the Corporation is organized to promote the highest well being by broadening the field of knowledge and increasing the adoption as a rule of conduct of those truths from which flows individual freedom as the result of self-government in harmony with the Creator.

During oral argument, Petitioner was asked to explain what the second sentence meant to Petitioner. In response, Petitioner's Michigan Program Director stated:

[T]he phrase about promoting the highest well-being by broadening knowledge is a reference to improving your knowledge on a broad base and thereby being able to give back to society by understanding it and humanity more fully. So when we send our students at the Michigan branch to do community service projects, we

not only want them to do the community service, we want them to understand why they are doing it.

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To the second part, toward the end, “. . . truths from which flows individual freedom as a result of self-government.” We want them to integrate all of this new knowledge into their community life, the house, the community at the house, the community in general in Ann Arbor, the state, the country, the world. We want them to be leaders and we want them to understand that they have a stake in their community and to be involved in a participatory democracy.

All of this boils down to what we consider the three pillars today, we boil it down to three different things. We are invested in democratic self-governance, the pursuit of intellectual inquiry, and concern with service to the community.

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The reference to the Creator, we are not a religious organization. We don't really hold true to that word and we're not even sure that its religious. . .but we do have a nondiscrimination clause that includes religious belief. (Transcript, pp47-48)

Another relevant document is Petitioner's By-Laws, as they relate to the Michigan Chapter. In pertinent part, this document states:

[The] Michigan Branch of Telluride Association shall have as its mission an exploration of democratic living and the development of intellectual life, practical work, and public service; the Branch shall express its mission through internal Branch activities and sustained projects in its surrounding community that explore the connections between intellectual inquiry and community service. (By-Laws, Section 6)

In a document titled “Charter of the Michigan Branch of Telluride Association,” the Telluride Association granted the Michigan Branch certain powers. One of these powers is:

The development in its members of habits tending toward intellectual growth, moral and practical sense, continuity of effort and purpose, and self-government, in accordance with the principles of Telluride Association as expressed in its Preamble and Constitution and as determined by Telluride Association in Convention assembled. (*Id.*, #1)

Having reviewed these documents, the question still remains whether Petitioner is organized chiefly, if not solely, for charity. Unlike many documents submitted in other

charitable exemption cases, none of these documents actually contain the word “charity.”<sup>1</sup> This omission, in addition to the elusive and ambiguous language utilized in these documents, makes it difficult to reach a decision as to whether Petitioner is a charitable institution. On the other hand, the fact that these documents do not contain the word “charity” does not necessarily mean that the organization is not charitable. Instead, the organization’s actual activities must be reviewed.

To summarize, these activities are (a) providing free room and board to between 20 and 30 University of Michigan students each year (referred to hereafter as Petitioner’s members), (b) operating a summer program for high school sophomores and juniors, (c) partnering with the University of Michigan in these summer programs and through the University’s LAC program, (d) offering a public speaking program which the public may attend at no charge, and (e) through its members, complete a community project each year. In light of these activities, Petitioner argues that while:

. . .the particular student housing arrangement involved in this case would qualify Telluride for a charitable organization exemption because of the special relationship with the University of Michigan, this is not the extent of this case and should not be viewed in exclusively that light. To do so would ignore an important component of the centerpiece and foundation of the purpose for which Telluride was incorporated, and that is community service. (Petitioner’s Supplemental Brief, p3)

The Tribunal concedes that Petitioner’s purpose could be described as that of community service. However, Petitioner’s community service is not the type typically thought of when that phrase is used. Instead, Petitioner’s community service benefits society by grooming its members to become tomorrow’s leaders. Petitioner does this by providing an environment

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<sup>1</sup> The Tribunal recognizes that the first sentence of Petitioner’s Restated Certificate of Incorporation contains the word “charitable”; however, this language is standard language utilized in most incorporation documents and adds nothing in terms of an organization’s actual purpose.

where its members are given a wide variety of experiences and opportunities that they would not normally receive elsewhere, including the task of operating the subject property on a day-to-day basis. These experiences not only provide opportunities for the members to learn and grow, it insures Telluride's success. Moreover, while the communities selected for service projects clearly benefit from the members' work, the members also benefit as these projects are also means by which the members learn and grow. The purpose for all of these experiences and opportunities is to assist the member in developing his or her potential for leadership and public service.

Without a doubt, Petitioner's activities are laudable; however, they do not translate into "charity" as contemplated under MCL 211.7o. Again, the definition of charity 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. (*Wexford*, p214)

As previously discussed, through its activities, Petitioner gives a variety of gifts. However, Petitioner's overriding gift is the opportunity to live at the subject property at no charge. This does not equate to "charity" as this gift is not provided to an indefinite number of persons. In fact, the gift is quite finite, being offered to, at most, 30 University of Michigan students per year and approximately 48 high school students each summer. Moreover, Petitioner has provided no evidence that the general public may utilize the subject property.

For these reasons, the Tribunal finds that Petitioner is not organized chiefly, or solely, for charity. As such, Petitioner is not a charitable institution.

Even if Petitioner were found to be a charitable institution, it would not meet the third *Wexford* factor, namely that a charitable institution may not discriminate "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.” (*Wexford*, p215)

It is true that Petitioner does not discriminate in the manner normally thought of, that being on the basis of race, color, creed, religion, national or ethnic origin, sex, sexual orientation, gender identity, or physical ability. However, the mere process of selecting residents who will receive free room and board requires some level of discrimination in that a choice must be made from the group Petitioner purports to serve.

While Petitioner’s members, and not Petitioner, actually select those students who will receive free room and board, the selection process was established by Petitioner. Petitioner’s website provides the following explanation of the selection process.

### **How do you choose who receives a spot in the House?**

**The process consists of two parts: application reading and interviews.**

**In the first stage, every candidate's application is read 5-6 times by randomly assigned Housemembers. Each candidate receives an overall ranking based on the strength of the essays, awards, references, and community service, among other factors. Then we have a meeting to decide who gets an interview.**

**In the second stage, Housemembers conduct interviews (usually an hour or two in length) with the candidates who were selected at that meeting. Then we have another meeting in which we choose whom to offer spots in the house, based on the combined strength of the written application and the interview.**

It is understood that Petitioner is not able to provide a room and board scholarship to every student who applies for one; however, the scholarships are not offered on a first-come, first-serve basis, or on any basis of need. Instead, students are selected to be a member by those who they would ultimately reside with, their peer group.

Once a student becomes a member, the student will not receive a scholarship for the upcoming school year unless that student has maintained at least a 3.0 point average. In this way, Petitioner does discriminate in terms of academic requirements.

In *Retirement Homes, supra*, the Supreme Court set forth the question to be asked in cases such as this: “Does [Petitioner] operate the [subject property] in such a way that there is a ‘gift’ for the benefit of ‘the general public without restriction’ or ‘for the benefit of an indefinite number of persons?’” (*Id.*, p349) In this case the answer is clearly “no.”

#### Educational Exemption

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

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

In *Grosse Pointe Academy v Township of Grosse Pointe*, unpublished opinion per curiam of the Court of Appeals, decided November 2, 2004 (Docket No. 248340), the Court of Appeals reiterated the test to be applied in cases wherein a petitioner claims a property tax exemption as an educational institution.

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

In the instant case, there is no dispute that Petitioner owns the subject property and that Petitioner is a nonprofit institution. Moreover, for the reasons set forth under the discussion regarding charitable exemptions, the Tribunal finds that Petitioner occupies the subject property

and that this occupation is solely for the purposes for which Petitioner was incorporated. Thus, the sole remaining issue is whether Petitioner is an educational institution.

“Since the Legislature has not defined the terms ‘educational’ or ‘charitable’ institutions as they appear in these statutes, it is our primary duty to interpret these phrases and glean the Legislature’s intent.” *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661; 378 NW2d 737 (1985), p664 (*MUCC*). In interpreting the term “educational,” and ultimately denying *MUCC* the exemption, the *MUCC* Court began by citing *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980).

Something more than serving the public interest is required to bring one claiming an exemption as an educational institution within the goals and policies affording a tax exemption.

In *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 727 (1948), our Court determined that an institution seeking an educational exemption must fit into the general scheme of education provided by this state and supported by public taxation. This proposition was refined in *David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968), which declared that an educational exemption may be available to an institution otherwise within the exemption definition, if the institution makes a substantial contribution to the relief of the burden of government. (*MUCC*, p668)

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

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

In response, the court stated:

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

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Because no dispute exists that petitioner in the instant case is an educational institution, the additional two-prong test announced in *Ladies Literary Club* is inapplicable. *Calvin College, supra*.

In this case, because there is a dispute as to whether Petitioner is an educational institution the additional two-part test must be applied.

As to the first part of the test, Petitioner asserts that it fits into the general scheme of education due to its relationship with the University of Michigan and its Michigan Learning Communities (MLC) program. The Tribunal disagrees. The Tribunal takes judicial notice of the following definition of "Michigan Learning Community" on the University of Michigan's website.

Learning communities are what a college education is all about! Students and faculty from many different backgrounds come together to discuss ideas, be creative, grow personally, advance intellectually, and make lifelong friendships. These programs can make it easy to integrate your academic challenges and your social experiences into your college life. Each community is designed to support your efforts to broaden understandings, succeed academically, and pursue your dreams; and each individual contributes to the community's well-being. The Michigan Learning Communities provide a rich selection of different program options, but all focus on learning and community.

While it is clear that participation in a learning community might enhance a student's college experience and possibly improve a student's grades, it cannot be said that it fits into the general

scheme of education. These programs are clearly voluntary and appear to be a formal, organized version of a work study group.

In regards to the TASS and TASP programs, these programs obviously provide a wonderful experience for the selected high school students; however, these programs cannot be said to fit into the general scheme of education. Petitioner has not shown that the students receive class credit at either their high school or at the University for the time spent in these programs. While the phrase “summer camp” doesn’t adequately describe these programs, it does appear that the programs are similar to a summer camp with the purpose of assisting students who are preparing for college.

Even if the Tribunal were to determine that Petitioner’s activities fit into the general scheme of education, the second half of the first part of the test is not met. In other words, to meet the test, Petitioner’s general scheme of education would not only have to be one provided by the state, it would have to be one supported by public taxation. As indicated by Exhibit 1 to Respondent’s Brief, the University of Michigan’s website contains the following statement: “University Housing is a self-sustaining auxiliary unit of the University and is expected to generate all of its own revenue for both operational and capital improvement expenditures. It receives no General Fund or State of Michigan allocations.” Another page of the University’s website states “Michigan students are not required to live in residence halls. . . .” (Respondent’s Brief, Exhibit 3) Thus, it is clear that providing room and board to University of Michigan students is not something supported by public taxation. Moreover, Petitioner provided no evidence that its other activities, such as TASS and TASP, would be supported by public taxation were Petitioner not to provide these opportunities.

The second part of the test requires that the claimant contribute substantially to the relief of the government's educational burden. It is Petitioner's position that its provision of student housing, together with its education programs, and its partnership with the University of Michigan, substantially contribute to relieving a governmental burden. Petitioner asserts that "were it not for Telluride's efforts, the burden imposed on the state government would be appreciably increased." (Petitioner's Brief, p 20)

The Tribunal disagrees. As previously discussed, neither the University of Michigan nor the State of Michigan is under any obligation to provide room and board, let alone free room and board, to the University's students. Moreover, Petitioner has not shown that any of its activities relieve the government's educational burden. Instead, Petitioner's activities complement or augment the government's educational burden similar to the way tutoring or student internships would. In providing this place for its members to live, Petitioner has established an environment that encourages learning and growth.

While Petitioner's activities are not cultural in nature, they are similar to those offered by the petitioner in *Ladies Literary Club, supra*.

It cannot be maintained that were it not for the Ladies Literary Club's programs, which enhance educational and cultural interests, the burden on the state would be proportionately increased. The club's programs do not sufficiently relieve the government's educational burden to warrant the claimed educational institution exemption. . . While the community may benefit culturally from (plaintiff's) activities, these activities are not the type which entitle one to an exemption because he has relieved the community from the expense of a like service. (*Id.*, p756)

For these reasons, the Tribunal finds that while Petitioner is a nonprofit institution, it is not a nonprofit *educational* institution within the meaning of MCL 211.7n.

JUDGMENT

The Tribunal finds that while there are no genuine issues as to any material fact, Petitioner is not entitled to judgment as a matter of law under MCR 2.116(C)(10). For the reasons discussed herein, the Tribunal finds that Petitioner is not a charitable institution entitled to a property tax exemption under MCL 211.7o or MCL 211.9, and that it is not an educational institution as contemplated by MCL 211.7n. Because the sole issue in this case is whether Petitioner is entitled to a property tax exemption, the Tribunal finds that Respondent is entitled to summary disposition pursuant to MCR 2.116(I)(2).

Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

IT IS FURTHER ORDERED that summary disposition is GRANTED in favor of Respondent pursuant to MCR 2.116(I)(2).

IT IS FURTHER ORDERED that the subject property's assessed and taxable values for the 2004, 2005 and 2006 tax years are those indicated in the Final Values section of this Opinion and Judgment.

IT IS FURTHER ORDERED that this case is DISMISSED.

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

MICHIGAN TAX TRIBUNAL

Entered: May 24, 2011

By: Patricia L. Halm