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

White Chapel Memorial Association,
Petitioner,

v

MTT Docket No. 338917

City of Troy,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF PETITIONER

A prehearing conference was held in the above-captioned matter on October 26, 2010. Petitioner was represented by attorney Mark McGowan of the firm of Plunkett & Cooney, P.C. Respondent was represented by its assessor, Leger A. (Nino) Licari. At the prehearing conference, the parties agreed to file a Joint Stipulation of Facts and then subsequently file respective Motions for Summary Disposition. The parties also agreed at the prehearing conference that they would inform the Tribunal if a fact hearing would be necessary in this matter. On November 23, 2010, the parties filed a Stipulation to Waive Hearing and to have Matter Resolved Based on Briefs. In lieu of filing a Motion for Summary Disposition, Petitioner filed its "Brief in Opposition to Assessment" on November 23, 2010, in support of its contention that the subject property is exempt from ad valorem taxation. On November 12, 2010, Respondent filed its "Brief in Support of Assessment."

This matter involves one parcel of real property identified by tax parcel number 88-20-16-601-001, consisting of in excess of 200 acres used as a cemetery, and one parcel of personal property used in Petitioner's cemetery business, identified by tax parcel number 88-99-00-338-480, located in the City of Troy, Oakland County, state of Michigan ("subject property"). A

"small portion" of Petitioner's real and personal property "utilized in connection with its floral service" was assessed by Respondent and is the subject of this appeal. (Stipulation of Facts, paragraph 4). Petitioner timely invoked the jurisdiction of the Tribunal for the 2007 tax year.

> Pursuant to MCL 205.737(5)(a), " . . . if the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from the appeal at the time of the hearing on the petition."

In the instant case, such a request was not made. Therefore, tax years 2008, 2009 and 2010 are automatically added to this petition.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did prove by a preponderance of the evidence that the subject property is exempt from ad valorem property tax pursuant to MCL 211.7t and/or MCL 456.108. For the reasons set forth herein, the Tribunal grants summary disposition in favor of Petitioner pursuant to MCR 2.116(I)(1).

STIPULATION OF FACTS

The parties filed the following joint Stipulation of Facts with the Tribunal on November 10, 2010, and the Tribunal adopts the joint Stipulation of Facts as part of its Findings of Facts:

"1. White Chapel Memorial Association, a Michigan rural cemetery corporation ('White Chapel'), is duly organized and existing under the Rural Cemetery Act, MCL 4.56.101 (sic) et. seq.

2. White Chapel's Cemetery is located in Troy, Michigan. Its property had not been assessed for property tax at any time during its over 85 years of operation until the year 2005.[1]

3. The Cemetery consists of over 200 enclosed acres in which over 100,000 deceased are buried. It is one of our Nation's major resting grounds for deceased U.S. military personnel and has been described as a 'jewel' of the City because of its beauty and importance to the community.

4. In 2007, a small portion of White Chapel's real and personal property utilized in connection with its floral service was assessed for taxation.

5. White Chapel provides floral services at a nominal cost for the benefit of the bereaved who, upon arriving at the cemetery, often choose to leave flowers on the graves of loved ones. This service is conducted at a loss to White Chapel and has been traditionally provided at White Chapel since its inception, as is typical at many other cemeteries.

6. White Chapel is the sole operator of the floral service conducted on its premises. The flowers are utilized only in the White Chapel Cemetery and the proceeds, if any, remain with the cemetery for maintenance and operation of the cemetery.

7. The Petitioner does not lease, loan or otherwise make its property available to or to be used by a private individual, association or corporation or any other entity, either directly or indirectly, in connection with its flower sales, and its operations with respect to flower sales are

[1] The first assessment of White Chapel Cemetery property in 2005 was due to the filing of a "Failure to Assess" complaint with the State Tax Commission, and its subsequent order to assess the property. There was also an assessment in 2006. For both of these years, the Board of Review reduced the assessment to zero. Beginning with the year 2007, the Board of Review made no reductions and Petitioner initiated this action. White Chapel does lease an office separate from the cemetery from which markers are sold and burial plots are reserved. That separate location has been assessed and property taxes have been paid without question for many years.

conducted by its own employees who are also employed for other cemetery purposes and who receive no compensation by way of commission or otherwise based on sales or sales revenue."

ADDITIONAL FINDINGS OF FACT

1. The subject property's true cash values (TCV), state equalized values (SEV), and taxable values (TV) are:

Parcel Number	Year	TCV	SEV	TV
88-20-16-601-001	2007	$11,480	$5,740	$5,740
88-20-16-601-001	2008	$13,080	$6,540	$5,870
88-20-16-601-001	2009	$13,080	$6,540	$6,120
88-20-16-601-001	2010	$13,500	$6,750	$6,100
88-99-00-338-480	2007	$460	$230	$230
88-99-00-338-480	2008	$460	$230	$230
88-99-00-338-480	2009	$460	$230	$230
88-99-00-338-480	2010	$460	$230	$229

PETITIONER'S CONTENTIONS

Petitioner contends that Respondent has misapplied MCL 211.181, the "Lessee/User Tax Act" in assessing the portion of the subject property that is used by Petitioner for its floral service. Specifically, Petitioner states that "White Chapel does not lease, loan or otherwise make its property available to be used by third parties in connection with its flower sales" (Brief in Opposition to Assessment, p. 3) and therefore, MCL 211.181 has no application to the subject property. While acknowledging that the floral service provided by Petitioner may not be an activity conducted for cemetery purposes pursuant to MCL 456.108 (which states that for rural cemetery corporations "all lands of said corporation enclosed and set apart for cemetery purposes and all rights of burial therein, shall be wholly exempt from taxation of any kind whatsoever"), Petitioner contends that Respondent has no authority "for partial taxation or apportioned taxation of property otherwise wholly exempt." (Brief in Opposition to Assessment, p. 3) Petitioner

further contends that "the question of whether the sale of flowers may be conducted for 'cemetery purposes' has not been addressed in any court decision reported in the state of Michigan that Petitioner has been able to find." (Brief in Opposition to Assessment, p. 3) The only relevant authority offered by Petitioner for the proposition that the tax exempt status of a cemetery is not adversely affected if it sells monuments, markers, vaults and flowers solely for use in the cemetery is found in United States Department of Treasury Revenue Ruling 72-17, 1972-1 CB 151, which states, in part:

> The exempt status of cemetery company is not adversely affected if it sells monuments, markers, vaults, and flowers solely for use in the cemetery and uses the sales proceeds for maintenance of the cemetery. . . . Decorating or marking burial sites with monuments or by other means is so closely related to burial purposes that it is necessarily incident to those purposes when the markers or decorations are used solely within that cemetery and profits from their sale do not inure to shareholders. . . .

RESPONDENT'S CONTENTIONS

It is Respondent's contention that the subject property is not exempt from property tax pursuant to direction received from the State Tax Commission. Specifically, the State Tax Commission ordered Respondent to assess the subject property. Prior to 2005, Respondent had not assessed the subject property. Beginning in 2005, at the direction of the State Tax Commission, which was relying on its Bulletin 4 of 2005, Respondent began assessing the subject property, consistent with the State Tax Commission's position that "the following cited exemptions do not exempt the real and personal property used in activities **which are not necessary for the operation of a cemetery,** such as manufacture and/or **sale of** caskets, vaults, monuments, **flowers**, etc. (emphasis added)." To supplement its Brief in Support of Assessment, Respondent submitted the following exhibits:

1. Notice from the State Tax Commission (STC) regarding investigation of a Failure to Assess (FTA) complaint.
2. Letter from STC to Mr. Watza requesting the investigation of an FTA complaint.
3. Failure to Assess (FTA) complaint from the Michigan Memorial Association to the STC.
4. Letter from Dickinson Wright to STC requesting a review of assessment policy of for profit cemeteries, on behalf of the Michigan Funeral Directors Association.
5. Memorandum from Dickinson Wright to STC advising of their interpretation of the exempt status of certain activities of for profit cemeteries.
6. Listing of for profit cemeteries provided with the FTA complaint, from the Michigan Memorial Association to the STC.
7. STC Bulletin No. 4 of 2005.
8. STC Bulletin No. 7 of 1991.
9. Email correspondence from attorney representing the Cemetery Association and Assessor response, regarding the taxation of certain activities of for profit cemeteries.
10. Request from STC for an explanation of why the local Board of Review reduced the 2005 White Chapel assessments to zero (0).
11. Assessor response to above STC request for explanation of local Board action.
12. Executive Secretary of STC report of action to be taken regarding assessment of White Chapel property.

13. Assessor notification from STC regarding action to be taken.

14. Sketch and description of a portion of the White Chapel maintenance building, and personal property that are the subject of this appeal.

15. Copy of pertinent portion of Watza appraisal of the subject properties.

CONCLUSIONS OF LAW

The general property tax act provides that "all property, real and personal, within the jurisdiction of this state, **not expressly exempted**, shall be subject to taxation." MCL 211.1. (Emphasis added.) Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc* v *Sylvan Twp*, 416 Mich 340, 348; 330 NW2d 682 (1982); *APCOA, Inc v Dep't of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995). The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:

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

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

> [T]he **beyond a reasonable doubt** standard applies when the petitioner attempts to establish that an entire class of exemptions was intended by Legislature. However, the **preponderance of the evidence** standard applies when a petitioner attempts to establish membership in an already exempt class. (Emphasis added.) *Id.* at 494, 495.

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

The parties agree that Petitioner is a Michigan rural cemetery corporation organized under the Rural Cemetery Act, MCL 456.101 et. seq. (Stipulation of Facts, paragraph 1) MCL 456.108 provides that "all the lands of said corporation enclosed and set apart for cemetery purposes, and all rights of burial therein, shall be wholly exempt from taxation of any kind whatsoever."

Further the Michigan General Property Tax Act (MCL 211.7t) provides, in part, that "land used exclusively as burial grounds, the rights of burial, and the tombs and monuments in the land, while reserved and in use for that purpose is exempt from taxation under this act."

1. Respondent's Contentions. Respondent relies solely on direction from the State Tax Commission, which concludes, among other things, that "the real and personal property used in activities which are not necessary for the operation of a cemetery are assessable." (Letter from Dennis W. Platte to Richard Watza dated January 28, 2005). In this regard, the State Tax Commission issued its Bulletin No. 4 of 2005 on February 23, 2005 (the STC stated that this

bulletin was a "re-issue of Bulletin No. 7 of 1991"). In its Bulletin, the STC, recognizing the exemptions provided by MCL 211.7t and MCL 456.108, states that:

> it is the position of the State Tax Commission, **based on court rulings**, that the following cited cemetery exemptions also exempt the real and personal property necessary for the operation of a cemetery such as maintenance buildings and equipment . . . . It is the position of the State Tax Commission that the following cited exemptions do not exempt the real and personal property used in activities which are not necessary for the operation of a cemetery, such as manufacture and/or sale of caskets, vaults, monuments, flowers, etc. Depending on the circumstances, the real property used for these activities may be separately assessed; it may be assessed as a building on leased land; or it may be assessed in accordance with the provisions of MCL 211.181. (emphasis added)

It is interesting to note that nowhere in the Bulletin, nor in its predecessor, STC Bulletin No. 7 of 1991, or in any of the correspondence entered into the record by Respondent, does the STC reference or identify any of the "court rulings" upon which it seems to rely. While recognizing Respondent's position that it was required to assess the subject property by the State Tax Commission, the Tribunal finds that Respondent has provided no legal support for its conclusion that the subject property should not be exempt. A review of Respondent's exhibits simply reflect the filing of a complaint by the Michigan Memorial Association with the State Tax Commission in 2005, an investigation by the State Tax Commission, and its ultimate conclusion that the subject property should be assessed based on the conclusions reached in its own bulletin. Again, throughout the State Tax Commission's investigation and Respondent's defense of this appeal, neither the State Tax Commission nor Respondent present any legal support for their conclusion that the subject property is taxable other than the State Tax Commission Bulletin, which seemingly relies on unidentified legal authority.

2. Petitioner's Contentions.

a. Petitioner first contends that no authority exists that would allow Respondent to assess a selected portion of the subject property, other than possibly MCL 211.181, which provides that an exempt lessor's lease of a property to a for-profit lessee eliminates the exemption for that property. Here, there is no lease; instead, Petitioner is simply using a small portion of the subject property to sell flowers to visitors to the cemetery. Further, the Tribunal finds no evidence in Respondent's Brief or exhibits that Respondent relied on the provisions of MCL 211.181 in making its determination that a portion of the subject property should be assessed. Petitioner's discussion of MCL 211.181 in its Brief is simply irrelevant.

In concluding that Respondent lacks authority to assess only a portion of the subject property, the Tribunal relies on *Clifton E Berlin v Gaines Township*, 130 Mich App 337; 343 NW2d 544 (1984), a published Michigan Court of Appeals decision wherein the Court of Appeals affirmed the Tax Tribunal's affirmation of the Township's assessment of a parcel that was reserved for use as a cemetery "and included a farm residence and minor farm buildings." At issue were two exemption statutes: MCL 211.7(f) (which became MCL 211.7t in 1980) and MCL 128.111 (a statutory provision allowing for the creation of private burial grounds for the "internment of such families and descendents, and for no other purpose . . . .") Here, the farm residence was occupied by the petitioner's nephew who maintained the cemetery in lieu of payment of rent. The petitioner contended that the Tribunal erred in partially exempting the subject property (the cemetery) and assessing the residence. The petitioner appealed the assessment of the residence on the cemetery grounds, contending that the Tribunal lacked

authority to partially exempt the subject property. The Court of Appeals agreed with the petitioner that a property may not be apportioned for the purpose of granting a private burial ground exemption. The Court relied on a Michigan Supreme Court decision, *In re Petitions of Auditor General*, 333 Mich 700, 704-705; 53 NW2d 586 (1952), which held that land set aside for future burials was also exempt under MCL 211.7(f), the former cemetery exemptions statute. The Supreme Court also concluded in *In re Petitions of Auditor General*, *supra,* that "[n]owhere does the legislative intent appear to exempt from taxation only the portions of cemeteries actually constituting graves and to subject the remainder to taxation." The Court of Appeals concluded that

> although the language was used to support the exemption, and the case involved a portion of cemetery land that had been set aside for future burials and contained what the majority opinion described as 'a shack', we believe *In re Petitions* by negative implication, supports the position that the nine-tenths acre tract, including the residence, is either exempt in its entirety or not exempt at all; i.e., the exemption may not be apportioned between the house and the land. It is true that charitable use exemption cases allow apportionment based on language that buildings and other property located on the real property are exempt if they are occupied 'solely for the purposes for which they were incorporated.' *Hospital Purchasing Service of Michigan v City of Hastings*, 11 Mich App 500, 508; 161 NW2d 759 (1968). However, private burial grounds, and the statutory language providing for such, are not the same as charitable institutions.

Thus, the Tribunal agrees with Petitioner's contention that Respondent erred in concluding that a portion of an otherwise exempt parcel may be determined to be taxable and finds that the entire subject property must be determined to be either exempt or taxable.

b. The primary issue before the Tribunal then is whether the subject property in its entirety is exempt. Petitioner contends that because the subject property is overwhelmingly used for cemetery purposes, the subject property should be exempt. In this regard, Petitioner's only support for its position is an Internal Revenue Service Ruling (Rev. Rul. 72-17, 1972-1 C.B.

151), which provides that the exempt status of a cemetery company is not adversely affected if it sells flowers "solely for use in the cemetery and uses the sales proceeds for maintenance of the cemetery." The Joint Stipulation of Facts filed by the parties confirms that Petitioner's sale of flowers is not profitable, is solely for the benefit of visitors to the cemetery, and all proceeds are used for the maintenance and operation of the cemetery. Thus, if the issue before the Tribunal was whether Petitioner should retain federal exempt status, clearly the Revenue Ruling would apply and allow Petitioner to retain such status. Here, however, the issue is not federal exemption, but exemption from Michigan property tax. In this regard, Michigan courts are clear that a party's

> income tax status does not affect or predetermine the taxable status of its property under the Michigan general property tax law . . . 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, supra, sections 7 and 9." *American Concrete Institute v State Tax Commission*, 12 Mich App 595, 606 (1968).

In *In re Petitions of Auditor General, supra*, the Michigan Supreme Court was faced with the issue of whether land purchased for future burials was exempt under two property tax exemption statutes consistent with the statutes applicable to this appeal (MCL 456.108 and MCL 211.7). Specifically, the land at issue was not yet used for burial purposes and was improved with a shack, "the use of which was permitted by plaintiff to the cemetery caretaker as part of his compensation." The Court concluded that the phrase "used exclusively as burial grounds" contained in existing statute (which is consistent with language currently found in MCL 211.7t) should be given liberal construction when applied to lands acquired for future burials and should not be limited to portions of cemeteries actually constituting graves. The Court also noted that

"the casual use of the property by the indigent for farming purposes without consideration is not to be regarded as an abandonment of the original object."

Note the dissent takes a strict construction approach to the statute (which is presumably Respondent's position), stating that

> it is a cardinal rule that exemption statutes . . . should receive a strict construction. . . . A grant of exemption is never presumed; on the contrary, in all cases of doubt as to the legislative intention, or as to the inclusion of particular property within the terms of the statute, the presumption is in favor of the taxing power, and the burden is on the claimant to establish clearly his right to exemption. . . . I am of the opinion that in order for plaintiffs to be granted a tax exemption they must affirmatively show that the land is used exclusively as burial grounds. Where property is used commercially and repugnant to its use for cemetery purposes, such property is not entitled to a tax exemption.

The Tribunal also recognizes the Court of Appeals' analysis in *Berlin, supra,* where it affirmed the Tribunal's ruling that the use of the house located on the property by the owner's nephew was more than caretaker use and therefore did not satisfy the "no other purpose" language contained in MCL 128.111. The Court distinguished *In re Petitions of Auditor General,* where the Supreme Court was "inclined toward liberality in construing this exemption" that its holding in this case "could be viewed as imposing a different standard of construction with respect to cemetery exemptions . . . but because a private residence does not appear to meet the requisites of MCL 128.111, even employing a 'liberality' standard, we conclude that the Tribunal's judgment be affirmed."

Here, the sole issue is whether Petitioner's use of a small portion of the subject property for the non-commercial sale of flowers to its visitors, with the proceeds used solely for the maintenance and operation of the cemetery, is sufficient to render the entire parcel taxable because the land is not used "exclusively as burial grounds" (MCL 211.7t) or does not constitute

lands "set apart for cemetery purposes" (MCL 456.108). In *In re Petitions of Auditor General,* the Michigan Supreme Court refused to follow the strict construction interpretation of the cemetery exemption statutes espoused by the dissent. In *Berlin,* the Court of Appeals determined that the house used as a residence by the owner's nephew was more than "the caretaker's shack approved in *In re Petitions, supra;* that its use is not incidental . . . ." The Tribunal finds that Petitioner's sale of flowers on the grounds of the cemetery is incidental to the primary use of the subject property as a cemetery and that the subject parcels should be exempt from ad valorem property tax pursuant to MCL 211.7t and MCL 456.108.

JUDGMENT

IT IS ORDERED that the subject property is exempt pursuant to MCL 211.7t and MCL 456.108.

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 shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined

by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, after December 31, 2008 at the rate of 3.315% for calendar year 2009, after December 31, 2009 at the rate of 1.23% for calendar year 2010, and after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: March 4, 2011

By: Steven H. Lasher