Specs Howard School of Media Arts, Inc.,
Petitioner,

v

City of Southfield,
Respondent.

MICHIGAN TAX TRIBUNAL

MAHS Docket No. 14-002172

Presiding Judge
Preeti P. Gadola

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On June 22, 2018, the Tribunal issued a Scheduling Order in the above-captioned case. That Order indicates in pertinent part that the parties shall each file a motion for summary disposition by October 11, 2018, and a response to the opposing party's motion for summary disposition by November 1, 2018. Both parties complied with the requirements and dates set forth in the Scheduling Order.

The Tribunal has reviewed the motions, responses, and the evidence submitted and finds that granting Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) and denying Respondent's Motion for Summary Disposition under MCR 2.116(C)(8) and (C)(10) is warranted.

PARTIES' CONTENTIONS

Petitioner's Motion

In support of its Motion, Petitioner, Specs Howard School of Media Arts, Inc. ("Specs Howard") contends that the subject property should be exempt from ad valorem taxation under MCL 211.9(1)(a) because it is an accredited educational institution that lessens the burden upon the state's publicly supported institutions by offering comparable programs to over 15,000 graduates. Petitioner contends that Respondent's reliance upon cases such as *David Walcott*,[1] *Ladies Literary Club*,[2] and *Harmony Montessori*[3] does not support Respondent's position, and instead, those cases serve to support Petitioner's contentions.

Petitioner, in particular, finds that *David Walcott* supports its exemption position, as it contends the facts in the subject case are materially similar. Specifically, the Court of Appeals in *David Walcott* found that institution eased the burden upon state-supported colleges and universities and meets its articulated test, if "the particular institution in issue were not in existence, then would, and could, a substantial portion of the student body who now attend that school instead attend a State-supported college or university to continue their advanced education in that same major field of study?"[4] Petitioner claims its programs are similar to those offered at several public institutions, its students qualify to attend those publicly funded schools and likely would attend those schools if Petitioner did not exist.

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[1] See *David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968).
[2] See *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980).
[3] See *Harmony Montessori Center v Oak Park*, unpublished opinion per curiam of the court of appeals, issued October 13, 2016 (Docket No. 326870).
[4] See *David Walcott*, *supra* at 240.

Petitioner alleges that, unlike the petitioner in *Ladies Literary Club*, wherein an educational exemption was denied, it is neither a social club nor a purveyor of cultural activities. Additionally, Petitioner claims, under the law as it stands, it is distinguishable from *Harmony Montessori,* wherein the Court of Appeals affirmed the Tribunal's denial of an educational exemption; because Petitioner's admissions standards are virtually identical to those of state-supported community colleges, no other private institution in Michigan offers programs similar to Specs Howard's with comparable tuition, its students are of an appropriate age for public education, and its services programs are substantially similar to those offered at publicly funded colleges and universities in the state. Moreover, Petitioner's brief states that Justice Markman's concurring opinion in the Michigan Supreme Court's recent decision to deny leave in *Harmony Montessori*[5] provides compelling analysis that the standard under which an institution must reduce the burden of public education is not supported by statute.

Petitioner's brief claims to establish that the subject property is used only for educational purposes, that Petitioner is accredited by the Accrediting Commission of Career Schools and Colleges ("ACCSC"), and that it offers degrees in three study programs, Broadcast Media Arts ("BMA"), Digital Media Arts, and Graphic Design. Petitioner further contends that its credits are transferrable to four public colleges and universities, that a fifth public college also had a credit transfer agreement with Petitioner, and that over 70% of Petitioner's graduates obtain jobs related to their field of study.

[5] See *Harmony Montessori Center v Oak Park*, 500 Mich 1016; 895 NW2d 928 (2017).

Respondent's Motion

In support of its Motion, Respondent contends that Petitioner neither fits within the general scheme of education provided by the state and supported by public taxation nor alleviates the burden of government in any way. Specifically, Respondent contends that the facts surrounding Petitioner's instructional programs are distinct from those in a publicly supported college or university. Respondent contends Petitioner does not fall within the term "other institutions" in Article 8, Section 6 of Michigan's Constitution because its board members are not appointed by the governor or controlled by locally elected boards. As a result, Respondent states that Petitioner should not be treated as an educational institution under MCL 211.9(1)(a)

Respondent's brief claims to establish that Petitioner offers only three programs of study, that the number of hours associated with a program are not in line with public schools and that Petitioner's single base fee model is also distinct from those programs. Respondent further claims that a significant number of Petitioner's enrollees do not complete the programs and that Petitioner's students typically graduate with significant debt. Petitioner does not track the high school GPA of its students, Petitioner does not track transfers between state-funded institutions and its own programs, and Petitioner's information as to whether its credits transfer to publicly funded colleges and universities may be outdated or exaggerated, and in any case, is limited. Respondent contends that the present facts are analogous to *Michigan United Conservation Club v Lansing*[6] because the type of education offered by the petitioner in that case is not per se mandated by the education laws of this state.

[6] See *Michigan United Conservation Club v Lansing*, 129 Mich App 1; 342 NW2d 290 (1982).

Respondent further contends that Petitioner fails to relieve the burden of government in any way. Specifically, Respondent contends that Petitioner fails the *David Walcott* standard because it cannot show that a majority of its students could and would attend a publicly funded institution if Petitioner did not exist. Respondent states that Petitioner fails to meet requirements regarding admissions standards, student qualification, field of study, time to complete a prescribed course of study, and the comparative quantity and quality of similar programs offered at state-supported schools. Specifically, Petitioner does not require students to take the SAT or ACT or have a minimum high school grade-point average. Further, Petitioner makes no requirements regarding English or mathematics proficiency and does not require any general education classwork to graduate. Very few credits of Petitioner's coursework transfer to the educational institutions with which it has articulation agreements. Respondent also points out that the duration of Petitioner's programs are atypical by higher education standards.

Petitioner's Response to Respondent's Motion

Petitioner contends that Respondent's Motion both mischaracterizes the facts relative to Petitioner's educational institution as well as the legal standard under which an exemption is granted for such institutions. It contends this situation is analogous to recent Tribunal matters, in *SBC Health Midwest*[7] and *Wexford Medical Group*,[8] in which the Michigan Supreme Court found that the Tribunal erred by engrafting unlawful requirements upon statutory language. Specifically, the Legislature enacted no

[7] See *SBC Health Midwest, Inc v Kentwood*, 500 Mich 65; 894 NW2d 535 (2017).
[8] See *Wexford Medical Group v Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

requirements regarding the length of an exemption claimant's instructional program, the transferability of its credit hours, the breadth of its courses, its number of degrees, admission policies, or licenses under any particular statute; Petitioner contends that these standards proposed by Respondent cannot truly represent the state of the law because they would have resulted in an exemption denial upon the petitioner in *David Walcott*. Petitioner further contends that Respondent wholly mischaracterizes the *United Conservation* decision.

Respondent's Response to Petitioner's Motion

Respondent contends that Petitioner's Motion is built almost entirely upon information supplied by two of Petitioner's agents – its president and its director of admissions. Specifically, it contends that Petitioner's facts concerning the degree to which it relieves the burden of government are not supported by the discovery answers and therefore amount to conjecture. This contention is stated with respect to the academic qualifications of Petitioner's students, about the subtle but notable differences between a degree and a diploma, about the purported similarities between Petitioner and the higher education program to which it compares itself, and about the purported similarities between Petitioner, a private entity, and the public educational institutions to which it compares itself.

Respondent further contends that *David Walcott* does not support Petitioner's argument because the petitioner in that case is factually distinct from Petitioner in many key respects – a shorter program of study, less detailed, costlier, and an unbalanced credit-transfer system.

Respondent further contends that *Harmony Montessori* is factually similar to the present case. While no relevant age factor is present in this case, Respondent contends that Petitioner failed to show its students would attend a public school if Petitioner did not exist, and further, that Petitioner failed to show its highly specialized and higher-cost program is similar to the programs offered by state-funded institutions.

Finally, Respondent contends that the Tribunal should not give weight to Justice Markman's concurring opinion in *Harmony Montessori*.[9] Specifically, Respondent states that MCR 7.301(E)[10] provides that "reasons for denying leave to appeal … are not to be published and are not to be regarded as precedent."

STANDARD OF REVIEW

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.[11] In this case, Petitioner moves for summary disposition under MCR 2.116(C)(10), and Respondent moves for summary disposition under MCR 2.116(C)(8) and (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." The Court of Appeals has held that:

> A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." When reviewing such a motion, a court must base its decision on the pleadings alone. In a contract-based action, however, the contract attached to the pleading is considered part of the

[9] See *Harmony Montessori*, *supra*.
[10] Respondent cites MCR 7.321(E), but the Tribunal finds this discrepancy is only a typographical error and does not affect the weight of Respondent's argument.
[11] See TTR 215.

pleading. Summary disposition is appropriate under MCR 2.116(C)(8) "if no factual development could possibly justify recovery." [12]

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 "when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law."[13]

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.[14] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[15] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[16] 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.[17] If the opposing party

[12] *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003) (citations omitted).
[13] *Lowrey v LMPS & LMPJ, Inc,* 500 Mich. 1, 5; 890 NW2d 344 (2016) (citation omitted).
[14] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[15] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[16] *Id.*
[17] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[18]

CONCLUSIONS OF LAW

The Tribunal has carefully considered the motions and finds that granting Petitioner's Motion under MCR 2.116(C)(10) and denying Respondent's Motion under MCR 2.116(C)(8) and (C)(10) is warranted.

Petitioner contends the subject property, the personal property of a for-profit educational institution, is entitled to an exemption from the payment of personal property tax pursuant to MCL 211.9(1)(a) which states:

> (1) The following personal property, and real property described in subdivision (j)(i), is exempt from taxation:
>
> (a) *The personal property of* charitable, *educational, and* scientific *institutions incorporated under the laws of this state*.[19]

The personal property of a *nonprofit* educational institution is exempt from taxation pursuant to MCL 211.7n, and, in 2017, the Court in *SBC Health Midwest*[20] found that the personal property of a *for-profit* educational institution is also exempt, pursuant to MCL 211.9(1)(a), because nothing in the statute requires nonprofit status and the Court found it would not read into the statute words that the legislature has not included.[21] As noted, the Court clarified the personal property of a for-profit educational institution is exempt but did not clarify the term "educational institution," relative to the statute, as the status was not at issue.

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[18] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).
[19] (Emphasis added).
[20] *SBC Health, supra.*
[21] *SBC Health, supra* at 68.

In this matter, the parties agree that the sole issue for the Tribunal's consideration is whether Specs Howard qualifies as an educational institution for purposes of tax exemption. The term "educational institution," however, is not defined by the legislature in the General Property Tax Act, but the determinative test as to what constitutes an educational institution is set by judicial precedent. The precedential cases that discuss the exemption from taxation of the property of an educational institution all stem from an analysis of MCL 211.7n[22] relative to the property of a nonprofit educational institution. However, the Tribunal will attempt to extract the meaning of educational institution, pursuant to MCL 211.9(1)(a), which applies to the personal property of a for-profit educational institution, from those cases, finding no distinction in appellate guidance.

In order to qualify for the educational exemption under MCL 211.7n, a petitioner must show: (1) it owns and occupies the property, (2) it is an educational institution, and (3) it occupies the property solely for the purpose for which it was incorporated.[23] Further, pursuant to the Court in *Ladies Literary Club:*

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.[24]

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[22] MCL 211.7n states:

> 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.* (Emphasis added).

[23] *Engineering Soc of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944).

[24] See *Ladies Literary Club, supra* at 755-756.

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.]"[25] The Tribunal finds there is no dispute between the parties that Petitioner owns and occupies the property and that it occupies the property solely for the purpose for which it was incorporated.

In *David Walcott*, a case decided in 1968, the petitioner, Kendall School of Design,[26] was a specialized institution for higher education in art and design. In previous cases, the Court found only the property of schools of a "general" nature to be exempt from taxation, granting an exemption to Webb Academy and Detroit Home and Day School, but denying exemptions to the property of two business colleges, Parsons Business College and Detroit Commercial College. The Court in *David Walcott*, however, found, "we do not conceive these decisions concerning business schools in 1911 and 1948 to include all specialized institutions of higher education in 1963 or 1968."[27] The Court also considered an attorney general's opinion which found the Detroit Conservatory of Music was a specialized school, did not teach the "three Rs," and, as such, its property was subject to taxation. The Court in *David Walcott* found Kendall School of Design offers only two liberal arts courses and does not teach "The Three R's."[28]

[25] See *David Walcott, supra* at 240.
[26] The Court in *David Walcott* refers to petitioner as "Kendall School of Design."
[27] See *David Walcott, supra* at 242.
[28] See *David Walcott, supra* at 238.

After considering prior opinions, the Court developed a test "to be applied in dealing with schools of higher education which seek tax exemption drawn from prior cases and the factual situation before us:"[29]

> If the particular institution in issue were not in existence, then would, and could, a substantial portion of the student body who now attend that school instead attend a State-supported college or university to continue their advanced education in that same major field of study?
>
> The probability of their attendance elsewhere on the college or university level would have to be derived *Inter alia* from the requirements for admission to the school seeking exemption, the qualifications of the student, the major field of study undertaken by the student, the time necessary to complete the prescribed course of study, and the comparative quality and quantity of the courses offered by the school to the same programs at the State colleges and universities. If such an institution is educating students qualified and willing to attend a State college or university, majoring in the same field of study, then it can be said that this institution is assuming a portion of the burden of educating the student which otherwise falls on tax-supported schools.[30]

The Court found Kendall School of Design, "admittedly an institution of specialized higher education, to fit into the scheme of education of this State. Were it not for the existence of the plaintiff institution, it is clear that the burden imposed on the art and design departments of our State supported colleges and universities would be appreciably increased."[31]

Kendall School of Design, a nonprofit educational institution, was approved by the Michigan Board of Education but not accredited by the North Central Association of Colleges and Secondary Schools or the National Association of Schools of Art, nor was it rated by the American Association of Collegiate Registrars and Admissions Officers.[32]

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[29] See *David Walcott, supra* at 240.
[30] See *David Walcott, supra* at 240.
[31] See *David Walcott, supra* at 243.
[32] See *David Walcott*, *supra* at 233.

Specs Howard is accredited by the ACCSC, listed as a nationally recognized accrediting program by the U.S. Department of Education.[33] Admission to Kendall required that a high school graduate have a minimum C average, three letters of recommendation, and an artistic portfolio.[34] Admission to Specs Howard requires the applicant to have a high school diploma or GED equivalency, as well as pass an entrance exam for the Broadcast Media Arts Program, consisting of "a general aptitude test, a grammar test and a recorded speech sample, and a computer proficiency test."[35]

Kendall's graduates go to work in the industry or apply to attend additional coursework at Michigan public universities.[36] Specs Howard graduates go to work in the industry or transfer to a Michigan public college or university.[37] Petitioner's Motion states that over 70 percent of Petitioner's graduates obtain employment in their fields of study.[38] The School has articulation agreements with Washtenaw Community College, Schoolcraft College, Oakland Community College, and Ferris State University. However, those agreements are only related to its BMA specialization.[39] Pursuant to

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[33] See Respondent's Brief, Exhibit 1 at 7, Exhibit 2. The Tribunal finds Petitioner's contentions are not only supported by the affidavits of Specs Howard's President and 25-year Director of Admissions and Career Services, but by written documentation from Specs Howard, submitted by Respondent in its exhibits. See Petitioner's Brief, Exhibits 1 and 2, Petitioner's Reply Brief, Exhibit 8, Respondent's Brief, Exhibit 2.

[34] See *David Walcott*, *supra* at 234.

[35] See Respondent's Brief, Exhibit 2; Petitioner's Brief, Exhibit 1 at 7.

[36] See *David Walcott*, *supra* at 234.

[37] In its answers to Respondent's interrogatories, Petitioner states it "does track whether its graduates continue their education after graduation, it does not keep records about which school they go to after graduation or whether than school is publicly funded." See Respondent's Brief, Exhibit 1, page 3. Petitioner's President in his affidavit states, "I have frequent communications with our graduates. My discussions with our graduates include updates about their professional and personal lives." Petitioner's Brief Exhibit 1 at 2. The Tribunal find that the Specs Director of Career Services knows where its students are placed. See Petitioner's Brief, Exhibit 2 at 2.

[38] See also Petitioner's Brief, Exhibit 2 at 3.

[39] Respondent's Brief Exhibits 9, 10, 11 and 12. Petitioner identified five public Michigan universities and colleges which it claims have transfer recognition, reciprocity agreements, or mandatory cross-education agreements with Petitioner – Eastern Michigan University, Ferris State University, Schoolcraft College, Washtenaw Community College, and Oakland Community College. However, the Tribunal was only able

agreements with Oakland Community College, during the subject period, "a student in OCC's Broadcast Technology Arts program could not graduate until the student also obtained a Specs Howard diploma for Broadcast Media Arts."[40] Pursuant to Schoolcraft College's website, a student may, "Spend a year at the Specs Howard studios to get real-world training while earning credits toward your degree." "Earn the balance of your credits at Schoolcraft." "Start the program at either Specs Howard or Schoolcraft."[41]

Kendall offered only two courses in liberal arts, worth about 12 credits upon transfer to another school, whereas the schools to which the students would transfer typically require a third of a potential graduate's credits to be in liberal arts.[42] Kendall course credits were not given because, without electives, all graduates were required to complete all courses in a particular field of study, which did create a credit transfer problem for that petitioner's students.[43] Specs Howard does not offer liberal arts courses or teach the "Three Rs," and similarly, not all of its credits transfer to public colleges or universities.

Kendall's program required three years of study, excluding summers. A Specs Howard diploma in BMA may be completed in 48 calendar weeks.[44] Public community

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to confirm agreements with Schoolcraft, Washtenaw, Oakland, and Ferris through exhibits. Petitioner notes the agreement with Oakland expired in 2017 but was in place in the prior years under contention.

[40] See Petitioner's Brief, Exhibit 1 at 3. (Affidavit of Petitioner's President, Martin Liebman). See Respondent's Brief, Exhibit 10. See www.catalog.oaklandcc.edu/programs/broadcast-arts-technology/broadcast-arts-technology-aa/ (viewed February 15, 2019), which states, "The Broadcast Option is a cooperatively arranged program with Specs Howard School of Media Arts. Oakland Community College will grant a block of 18 credit hours (applicable to Associate in Arts – Broadcast Option only) to students who have completed the Radio and Television Broadcasting course with Specs Howard School of Media Arts. In addition to the 18 credit hours, students must meet the OCC requirements for Associate in Arts – Broadcast Option degree."

[41] Petitioner's Brief Exhibit 2 at 3. (Affidavit of Petitioner's Director of Career Services and former Director of Admissions, Nancy Shiner). See also Respondent's Brief, Exhibit 11.

[42] See *David Walcott*, *supra* at 235.

[43] *Id*.

[44] See Respondent's Brief at Exhibit 2.

colleges award degrees that require an additional length of study, however, also offer certificates of completion that can be obtained in a similar amount of time.[45] The Kendall School of Design faculty consisted of trained experts, most of whom boasted college degrees.[46] Specs Howard faculty in the BMA program, have bachelor and/or masters degrees, Specs Howard diplomas, and extensive past experience.[47] The Tribunal finds Kendall School of Design and Specs Howard to be considerably similar educational institutions.

Respondent contends that Petitioner does not relieve a substantial governmental burden because it only offers three courses of study. The Tribunal finds there is no evidence that a limited number of study areas lessens Petitioner's ability to reduce the burden of government. The programs taught by Petitioner in its BMA program focus upon the same or similar subject matter to publicly funded programs identified by Petitioner's evidence. Respondent also argues that Petitioner has no requirements regarding English or mathematics for its students, but again, this ignores the standard set by the Court of Appeals in *David Walcott*, as that petitioner offered a bare minimum of liberal arts and general education classes.[48]

Respondent contends Petitioner utilizes a base enrollment fee rather than a per-hour enrollment fee, like public colleges and universities. However, Respondent fails to articulate how this difference in what amounts to a billing mechanism would lessen

[45] See www.wccnet.edu (viewed February 15, 2019), Washtenaw Community College offers certificates and advanced certificates in digital media arts, as well as associates degrees. See www.lcc.edu, (viewed February 15, 2019). Lansing Community College offers two certificates of completion in Digital Media, Audio and Cinema.
[46] See *David Walcott*, *supra* at 235.
[47] See Respondent's Brief, Exhibit 2.
[48] See *David Walcott*, *supra* at 235.

Petitioner's ability to reduce the burden of government. The Tribunal is not convinced that the mere fact that Petitioner's billing procedure is atypical by public college and university standards reduced its ability to alleviate the burdens of those institutes.

Respondent presented evidence indicating that Petitioner's programs of study may be completed within a shorter period of time than the comparable public university programs. Specifically, there might be significant reasons for prospective students to differentiate between the public programs and Petitioner's programs based upon the amount of time it takes to complete those programs. For example, a prospective student may prefer Petitioner's program to a public program because it takes less time to complete all coursework required to graduate. However, a prospective student may also prefer a longer public program based upon the required liberal arts education in addition to potential increased focus into the subject matter. In either event, the test in *David Walcott* suggests, if the particular institution were not in existence, would and could a substantial portion of the student body *continue* their advanced education in the same major field of study, or if the institution is educating students *qualified and willing to attend a State college or university, majoring in the same field of study,* "then it can be said that this institution is assuming a portion of the burden of educating the student which otherwise falls on tax-supported schools."[49] Here, the mere existence of articulation agreements, including the "Institutional Partnership Agreement between Ferris State University and Specs Howard School of Media Arts," demonstrates that Petitioner's students can commence or continue their education at a public college or

[49] See *David Walcott*, supra at 240.

university instead of Specs Howard.[50] Further, there are community college certificates that may be completed in less time than an associate degree, as can Petitioner's BMA degree.

Respondent also contends that Petitioner's students graduate with significant debt but failed to qualify the degree or extent to which the purported debts of Petitioner's graduates are similar or different than those from the public universities. Likewise, Respondent provided evidence of Petitioner's graduation rate and identified those rates as being too low to allow them to be comparable to the public universities, but without data from those other educational institutes, the Tribunal cannot find that this factor carries much weight, as all postsecondary educational programs likely exhibit some number of students who fail to complete the program.

Respondent argues that Petitioner's board members are not appointed by either the governor or local elections. However, Respondent fails to reconcile that argument with an explanation of how any non-public school could qualify for the exemption under this analysis. A school clearly need not be public to qualify for the exemption under the *David Walcott* test.

Further, Respondent contends that Petitioner is analogous to the petitioner in *Michigan United Conservation Club* because the purported education at issue is not the type mandated by the state. Respondent's effort to connect Petitioner to the petitioner in *Michigan United Conservation Club*[51] is not persuasive. The Michigan Supreme Court found that the petitioner in that case was not eligible for the educational exemption

[50] See Respondent's Brief at Exhibit 12.
[51] See *Michigan United Conservation Club*, *supra.*

because conservation education programs are not mandated under state law, and therefore, do not fall within the general scheme of education provided by the state. In some sense, the Tribunal finds it awkward to reconcile this requirement with the holding in *David Walcott*, as postsecondary art education is also not mandated by state law. Nevertheless, the Tribunal finds that Petitioner is more similar to the petitioner in *David Walcott* than that in *MUCC*. Specifically, Petitioner and the petitioner in *David Walcott* offer certificate-granting programs in fields of study also taught by publicly funded colleges and universities, where there was no showing that the conservation program in *MUCC* was identical or similar to publicly offered programs in any way.

The Michigan Supreme Court affirmed the Michigan Court of Appeals in its determination that the petitioner in *Ladies Literary Club*[52] did not qualify for the exemption of its property from taxation. That petitioner conducted a wide variety of activities at its property, including in pertinent part "trips to see museum exhibits, music festival, and plays; sponsoring lectures on antiques, music, and poetry; and conducting classes in painting, photography, and yoga."[53] The Court held that qualifying for the exemption requires more than serving the public interest; a petitioner must, as noted above, "fit into the general scheme of education provided by the state and supported by public taxation" to qualify.[54]

Petitioner is discernible from the petitioner in *Ladies Literary* in a number of key respects. Unlike that petitioner, the Petitioner in this case is an accredited degree-granting post-secondary education institute. Its degree-granting programs, while

[52] See *Ladies Literary Club*, *supra.*
[53] *Id*. at 755.
[54] *Id*.

designed differently than similar programs at public universities, nevertheless offer educational opportunities within the general scheme of education set forth by the public college and university systems.

In *Harmony Montessori*,[55] the Court found the property of a specialized children's preschool and kindergarten did not qualify for exemption as a result of its alleged status as a nonprofit educational institution. The Court affirmed the Tribunal's findings that if the school did not exist, a small amount of age-qualified children could attend public school, but they would attend another Montessori school, a specialized type of learning with expensive tuition. The Court found that many parents of eligible children chose to send their children to Harmony and pay its tuition, rather than public school, even if they qualified. The Tribunal finds Petitioner offers programs similar to public institutions, its admissions standards are generally alike, its students are the appropriate age for public college or university education, and could and would attend a public school if Petitioner did not exist.

Overall, the Tribunal finds that Petitioner's educational programs relieve the burden of government. Like the petitioner in *David Walcott*, Petitioner offers degree-granting programs taught by educated instructors in areas in which the state's public universities also confer degrees. Petitioner's existence lessens the burden of those institutions, and therefore, granting the exemption under MCL 211.9(1)(a) is appropriate.

The Tribunal issues this decision with full knowledge that Justice Markman recently opined as to the flaws in the *David Walcott* test. However, Petitioner correctly

[55] See *Harmony Montessori Center, supra.*

contends in its response to Respondent's Motion that an Order denying leave to appeal is not deemed to dispose of an appeal, and as such, is not a judgment under Michigan law;[56] further, it cannot be regarded as precedent.[57] Nor is Justice Markman's concurrence the first non-precedential opinion to cast doubt upon the *David Walcott* test, as the Michigan Court of Appeals in its unpublished decision in *Michigan Laborers' Training & Apprenticeship Fund v Breitung Township*[58] also expressed doubt that the test complies with the legal requirement not to read into an unambiguous statute in order to create a requirement not imposed by the statute itself.[59] The Tribunal recognizes that it is bound to discern and give effect to the Legislature's intent as expressed in the words of the statute.[60] Notwithstanding, the Tribunal is constrained to follow precedent previously established by the Michigan Supreme Court, and in published cases of the Michigan Court of Appeals, in rendering its decisions. To the extent that the Tribunal finds any conflict between the plainly worded meaning of a statute and a precedential decision of the Michigan Supreme Court or Michigan Court of Appeals interpreting that statute, the judicial authority must take precedent.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED. The subject property, parcel no. 76-99-46-252-600, is exempt from taxation as the personal property of an educational institution pursuant to MCL 211.9(1)(a), for the 2014-2017 tax years.

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[56] See MCR 7.315(A).
[57] See MCR 7.301(E).
[58] *Michigan Laborers' Training & Apprenticeship Fund v Breitung Township*, unpublished opinion per curiam of the Court of Appeals, issued October 23, 2012 (Docket No. 303723).
[59] See generally *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002).
[60] See *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002).

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(8) and (C)(10) is DENIED.

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.[61] 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

[61] See MCL 205.755.

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%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, and (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%.

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

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.[62] 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.[63] 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.[64] Responses to motions for reconsideration

[62] See TTR 261 and 257.
[63] See TTR 217 and 267.
[64] See TTR 261 and 225.

are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[65]

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."[66] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[67] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[68]

By Preeti P. Gadola

Entered: February 20, 2019
ppg/bw

[65] See TTR 261 and 257.
[66] See MCL 205.753 and MCR 7.204.
[67] See TTR 213.
[68] See TTR 217 and 267.