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

ITT Educational Services, Inc,
Petitioner,

v

MTT Docket No. 15-001819

Flint Township,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

BACKGROUND

At issue in this appeal is whether real and personal property owned by Petitioner, formerly a post-secondary undergraduate program, is exempt from ad valorem taxation as an educational institution, under MCL 211.7n and 211.9(1)(a), for the 2015 and 2016 tax years. The parties agree that there are no genuine issues of material fact outstanding in this appeal and have submitted stipulated facts, as identified below. The parties further agree that, in light of *SBC Health Midwest, Inc v City of Kentwood*,[1] ("*SBC*") Petitioner's personal property, parcel number 07-82-479-008, qualifies as an "educational institution" under MCL 211.9(1)(a) and is exempt from taxation. The sole remaining legal issue to be determined by this Tribunal is whether Petitioner must be a *nonprofit* educational institution to qualify for the exemption under MCL 211.7n.

SUMMARY OF ARGUMENTS

Respondent's September 29, 2017 Motion for Summary Disposition is founded on its belief that the *SBC* case held that MCL 211.7n requires the qualifying taxpayer to be a nonprofit entity. Respondent outlines the *SBC* decision where the *SBC* Court explained the differences and similarities between the MCL 211.9(1)(a) and MCL 211.7n. Respondent argues that the Legislature expressly excluded the term "nonprofit" from the language in MCL 211.9(1)(a) and expressly included the term "nonprofit" in MCL 211.7n. Thus, Respondent requests this Tribunal

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

rule in its favor finding that Petitioner is a "for profit" educational institutional and, therefore, does not qualify for the exemption under MCL 211.7n.

On October 16, 2017, Petitioner filed a response to the Motion disagreeing with Respondent's interpretation of *SBC*. Petitioner argues that MCL 211.7n and MCL 211.9(1)(a) must be read *in pari materia* to mean that MCL 211.7n does not require an educational institution to be a nonprofit to qualify for the exemption. Petitioner alleges that Respondent is writing its own meaning of the statue instead of looking at the grammatically correct interpretation of the statute.

Petitioner filed a cross motion for summary disposition on October 2, 2017, arguing that the language of MCL 211.7n is clear, unambiguous, and not open to statutory interpretation. Petitioner believes that when applying common grammar rules the statute does not limit the exemption to nonprofit educational institutions only. Rather, the terms "nonprofit theater," "library," "educational," and "scientific," are all independent adjectives that modify the noun "institutions." In the alternative, Petitioner argues that if MCL 211.7n is deemed ambiguous, the term "nonprofit theater" was added to the statute in 1974 independent of the other types of institutions; thus, "nonprofit" modifies only the word theater and does not apply to the remainder of the institutions.

On October 11, 2017, Respondent filed a response agreeing that the statute is unambiguous but it unambiguously limits the exemption to nonprofit educational institutions. Respondent disagrees with Petitioner's analysis and believes that the term "nonprofit" modifies all institutions included in the series. Respondent refers to Michigan's constitution and case law which requires educational institutions be nonprofit entities in order to qualify for MCL 211.7n.

STIPULATED FACTS

The parties have stipulated to the following:

1. The subject property (PPN: 07-31-100-002) is classified as commercial real property, and is located at 6359 Miller Rd., Swartz Creek, Ml 48473.
2. The subject property (PPN: 07-82-479-008) is classified as commercial personal property, and is located at 6359 Miller Rd., Swartz Creek, MI 48473.
3. The subject real and personal property was owned and used by Petitioner ITT Educational Services, Inc., ("Petitioner" or "ITT Educational Services") during 2015 and 2016.

4. ITT Educational Services is Delaware for-profit corporation.
5. The Petitioner qualifies as an educational institution as that term is defined in MCL 21l.9(l)(a) and 211.7n.
6. Petitioner ceased operating as an educational institution on September 7, 2016.
7. The issue in this case is whether the subject commercial real property was exempt from ad valorem property taxes under MCL 211.7n. ITT Educational Services contends that because the subject property was owned and operated by an "educational institution," even though that institution was for profit, it was exempt. The Charter Township of Flint disagrees, contending that to be exempt the owner would have to be a not for profit institution as well as an educational institution.
8. The values on the tax roll for the tax years at issue are as follows:

Tax Year	Parcel Number	True Cash Value	State Equalized Value	Taxable Value
2015	07-31-100-002	$1,732,200	$866,100	$755,770
2015	07-82-479-008	$336,200	$168,100	$168,000
2016	07-31-100-002	$1,911,200	$955,600	$758,030
2016	07-82-479-008	$297,200	$148,600	$148,600

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.[2] In this case, both Petitioner and Respondent move for summary disposition under MCR 2.116(C)(10).

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.[3]

[2] See TTR 215.
[3] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

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.[4] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[5] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[6] 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.[7] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[8]

CONCLUSIONS OF LAW

The parties agree that, considering the *SBC* case, Petitioner's commercial personal property, parcel number 07-82-479-008, is exempt from ad valorem taxation under MCL 211.9(1)(a). This section of the General Property Tax Act ("GPTA") exempts the personal property of educational institutions incorporated under the laws of this state from taxation.[9] In *SBC*, the Supreme Court of Michigan was asked to determine whether the language of MCL 211.9(1)(a) is unambiguous and does not require nonprofit status to claim the exemption. The *SBC* Court held that the Legislature did not intend to limit the scope of MCL 211.9(1)(a) by enacting MCL 211.7n and MCL 211.7n cannot be read into MCL 211.9(1)(a). The *SBC* Court affirmed the Court of Appeals decision concluding for-profit institutions may claim an exemption under MCL 211.9(1)(a). The parties have stipulated that Petitioner is a for-profit entity that qualifies as an educational institution as the term is defined in MCL 211.9(1)(a). As such, this Tribunal finds that there is no genuine issue of material fact relating to whether Petitioner is entitled to an exemption for its commercial personal property and Petitioner is entitled to judgment as a matter of law.

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[4] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[5] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[6] *Id.*
[7] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[8] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).
[9] The requirement that the institution be incorporated under the laws of the State of Michigan was found to be unconstitutional. See *American Youth Foundation v Benona Twp.*, 37 Mich App 722, 724; 195 NW2d 304 (1972), citing *WHYY v Glassboro*, 393 U.S. 117; 89 S.Ct. 286, 21 L.Ed.2d 242 (1968).

The remaining issue to be analyzed is whether Petitioner's commercial real property, parcel number 07-31-100-002, is exempt from ad valorem taxation under MCL 211.7n. 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. In addition, real estate or personal property owned and occupied by a nonprofit organization organized under the laws of this state devoted exclusively to fostering the development of literature, music, painting, or sculpture which substantially enhances the cultural environment of a community as a whole, is available to the general public on a regular basis, and is occupied by it solely for the purposes for which the organization was incorporated is exempt from taxation under this act.

Since "tax exempt statutes must be strictly construed in favor of the taxing authority,"[10] Petitioner must prove, by a preponderance of the evidence, that it is entitled to this exemption.[11]

Unlike MCL 211.9(1)(a), this law uses the term "nonprofit" and the parties disagree whether "nonprofit" modifies the term "educational" in the first sentence of the statute. Though the parties agree for separate reasons that the statute is unambiguous, both parties provide their interpretations of the statute using rules of grammar and applying the *SBC* case to this appeal. If statutory language is clear and unambiguous "the statute must be enforced as written and no further judicial construction is permitted."[12] Statutes must be read wholly "giving each and every word its plain and ordinary meaning unless otherwise defined" and every word, phrase, and clause in a statute, must be given effect and the court must avoid a construction that would render part of the statute surplusage or nugatory.[13]

The GPTA is a progeny of the General Tax Law, Public Act 206 of 1893. Real Estate Exemptions were enumerated in Section Seven of the General Tax Law. Relevant to this case is paragraph 4 of Section Seven which states that "Such real estate as shall be owned and occupied by library, benevolent, charitable, educational and scientific institutions, incorporated under the

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[10] *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); see also *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753; 298 NW2d 422 (1980).
[11] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).
[12] *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223.
[13] *In re Receivership of 11910 South Francis Rd*, 492 Mich. 208, 222; 821 NW2d 503 (2012), *Johnson v Recca*, 492 Mich. 169, 177; 821 NW2d 520 (2012).

laws of this State, with the buildings and other property thereon, while occupied by them solely for the purposes for which they were incorporated . . . .” This shows the long history of the Legislature’s intent to exempt qualifying educational institutions from taxation. The term “nonprofit” is not included in this original version of the law or any subsequent version of MCL 211.7[14] or MCL 211.7n until 1974.[15] Though the Tribunal could find no concrete authority regarding the origin of the term “nonprofit,” one source states “the concept of ‘nonprofit organizations’” as a unified and coherent ‘sector’ dates back only to the 1970s.”[16] However, the Tribunal recognizes that the term “nonprofit” was used prior to the conception of the nonprofit sector in the 1970s.

Given that the specific term “nonprofit theater” was added to MCL 211.7, that “nonprofit” was not included in the previous version of the statute, and that the term “nonprofit” may not have been a widely recognized and utilized term during the inception of the General Tax Law of 1893 and the subsequent amendments, the Tribunal finds that the current version of the statute, MCL 211.7n, is susceptible to more than one meaning (i.e. ambiguous); thus, judicial construction is justified.[17] The Michigan Supreme Court has held that “The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language.”[18] “When considering the correct interpretation, the statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme.”[19] In addition, a requirement may not be read into the statute that the Legislature has seen fit to omit.[20]

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[14] Prior to the enactment of MCL 211.7n, the relevant exemption was encompassed in MCL 211.7 which was titled “Property exempt from taxation.”
[15] The 1974 version of MCL 211.7 read, in pertinent part, to exclude from taxation “Such real estate or personal property as shall be owned and occupied by nonprofit theater, library, benevolent, charitable, educational, or scientific institutions and memorial homes of world war veterans incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated.
[16] Hall, P. D., Historical Perspectives on Nonprofit Organizations in the United States, in The Jossey-Bass Handbook of Nonprofit Leadership and Management (eds D. O. Renz and R. D. Herman, 2016)
[17] See *Rowell v Security Steel Processing Co*, 445 Mich 347; 528 NW2d 409 (1994), citing to *State Treasurer v Wison*, 423 Mich 128; 377 NW2d 703 (1985).
[18] *Spectrum Health v Farm Bureau*, 492 Mich 503, 515; 821 NW2d 117 (2012).
[19] *Michigan Prop, LLC v. Meridian Twp,* 491 Mich 518, 528; 817 NW2d 548 (2012) (internal citations omitted.)
[20] *Basic Prop Insurance Ass'n v Office of Financial & Insurance Regulation,* 288 Mich App 552, 560; 808 NW2d 456 (2010).

The Tribunal does not believe that it is as simple as looking at the grammatical construct of MCL 211.7n since "nonprofit theater" was added to an existing string of institution types that were included as exempt since 1983.[21] Petitioner even acknowledges that "the first sentence [of MCL 211.7n] could have more than one meaning, considering the nature of the words used and the placement of punctuation."[22] As such, the Tribunal cannot find merit in Petitioner's argument that "nonprofit" does not apply "equally to each adjective," and does not "modify a series of nouns" since "theater" and "library" are not included as plural nouns.

It is important that the Tribunal "look beyond the clear text of a statute to discover an unexpressed legislative intent."[23] Respondent, in its arguments, refers to the Constitution of Michigan of 1963 which provides that "Property owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes."[24] The interplay between this section of the State Constitution and MCL 211.7[25] was analyzed in *American Youth Foundation v Benona Twp*.[26] In *American Youth Foundation*, the plaintiff sought exemption from taxation, under MCL 211.7, as a non-profit religious and educational organization. The Michigan Court of Appeals ultimately ruled that American Youth Foundation did not qualify for the exemption because it was incorporated in Missouri and not Michigan. As mentioned in footnote nine, this requirement is unconstitutional and is not at issue in this case. Nevertheless, the relevant aspect of this case is the Court of Appeals' analysis of the plaintiffs argument that the 1963 State Constitution supersedes MCL 211.7. The *American Youth Foundation* Court looked at the "intent of the framers of the constitution and of the people adopting it,"[27] and specified that "the first resort . . . is to the natural signification of the words employed in the order and grammatical

[21] The Tribunal shall not reference the prior version's reference to memorial homes since they are not included in the current version of the statute.
[22] Petitioner's Brief in Support of Petitioner's Motion for Summary Disposition at 8.
[23] *Koontz v Ameritech Services Inc*, 466 Mich 304; 645 NW2d 34 (2002), citing *Sun Valley Foods v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).
[24] Const 1963, art IX, §4.
[25] Public Act 148 of 1963, MCL 211.7 stated "Such real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions and memorial homes of world war veterans incorporated under the laws of this State, with the buildings and other property thereon, while occupied by them solely for the purposes for which they were incorporated." This is substantially similar to the amendments in the 1970s referenced throughout this opinion.
[26] *American Youth Foundation v Benona Twp*, 8 Mich App 521; 154 NW2d 554 (1967).
[27] *Id*. At 528.

arrangement in which the framers of the instrument have placed them . . . ."[28] The Court further opined that the phrase "as defined by law" in Const 1963, art IX, §4 "makes reference to existing common and statutory law and such future definitive law as is necessary to make practical and reasonable the application of the broad limitation of §4, to existing conditions."[29] The Court cites *Hall v Ira Township*[30] for its guidance that "The framers of the Constitution are presumed to have knowledge of existing law and to act in reference to that knowledge."[31] It also looks to the Constitutional Convention comments regarding this section which states that "This is a new section providing exemption from property taxes of those properties owned and occupied by non-profit corporations and used exclusively for religious or educational purposes. These exemptions already exist by statute."[32] First, it is apparent that Section Four of Article Nine of the State's Constitution relates to both nonprofit religious and nonprofit educational organizations, even though the grammatical arrangement of the word "nonprofit" comes only before the word religious. This is evidenced by the Convention Comment which speaks to "non-profit corporations" which encapsulates both religious and educational organizations referenced in that section. Further, MCL 211.7 (now MCL 211.7n) was recognized to be in existence when the Constitution was drafted. Thus, this section of the Constitution "validate[s] the existing statutory law as set out in [211.7],"[33] and reading this *in pari materia* with MCL 211.7n shows that it was the Legislature's intent that nonprofit educational institutions are the contemplated organizations to be exempted from taxation.

Respondent argues that the *SBC* case supports this conclusion. While the *SBC* case related to whether a for-profit educational institution could qualify for the exemption under MCL 211.9(1)(a), the *SBC* Court was required to compare this statute to MCL 211.7n to determine whether the statutes must be read in conjunction. The *SBC* Court specifically stated that the statutes cannot be read together because: (i) "MCL 211.9(1)(a) cannot be said to have any bearing on the force and effect of the 'nonprofit' requirement in MCL 211.7n,"[34] (ii) an educational institution may avoid this requirement (i.e. nonprofit status) by pursuing a personal

[28] *Id.*
[29] *Id.* at 529.
[30] *Hall v Ira Township*, 348 Mich 402; 83 NW2d 443 (1957).
[31] *Id.*
[32] Constitutional Convention comments at 83.
[33] *American Youth Foundation* at 530.
[34] *SBC* at 540.

property tax exemption under MCL 211.9(1)(a), and (iii) "the two statutes present alternative paths to tax exemption."[35] The Court also refers to Article IX, Section 4 of the Constitution and states it "mandates an exemption from tax for nonprofit 'religious or educational organizations,'"[36] which supports the Tribunal's finding that both the Constitution and MCL 211.7n exempts qualifying nonprofit educational institutions from taxation.

Given the foregoing, the Tribunal finds there is no genuine issue of material fact outstanding in relation to whether Petitioner qualifies for the exemption under MCL 211.7n. Here, the parties have stipulated that Petitioner is a for-profit educational institution. Therefore, Petitioner does not meet the qualification requirements under MCL 211.7n and Petitioner has not proven by a preponderance of the evidence that it is entitled to this exemption

JUDGMENT

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

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

IT IS FURTHER ORDERED that the subject property, parcel number 07-82-479-008, shall be granted an exemption, under MCL 211.9(1)(a), for the 2015 and 2016 tax years; the amount of the exemption is 100%. The subject property's taxable value ("TV"), for the tax years at issue, shall be as follows:

Parcel Number: 07-82-479-008

Year	TV
2015	$0
2016	$0

IT IS FURTHER ORDERED that the subject property, parcel number 07-31-100-002, shall not be granted an exemption, under MCL 211.7n, for the 2015 and 2016 tax years. The subject property's TV, for the tax years at issue, shall be as follows:

Parcel Number: 07-31-100-002

Year	TV
2015	$755,770
2016	$758,030

[35] *Id.*
[36] *Id.* At 542.

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.[37] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, and (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%.

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

[37] See MCL 205.755.

APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[38] 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.[39] 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.[40] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[41]

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."[42] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[43] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[44]

By Steven H. Lasher

Entered: October 31, 2017
sms

[38] See TTR 261 and 257.
[39] See TTR 217 and 267.
[40] See TTR 261 and 225.
[41] See TTR 261 and 257.
[42] See MCL 205.753 and MCR 7.204.
[43] See TTR 213.
[44] See TTR 217 and 267.