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

Genesee Christian Day Care Services, Inc.,
d/b/a Happy Elephant Child Care Centers,
Petitioner,

v MTT Docket No. 361657

City of Wyoming,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

This case involves Petitioner's claim that parcel number 41-17-24-102-037, located in the City of Wyoming, County of Kent is exempt from real property ad valorem taxation for tax years 2009-2011. Petitioner also contends that its personal property (parcel number unknown) is exempt from taxation for the tax years in question. James C. Dillard of the Law Office of James C. Dillard, attorney, represented Petitioner. Jack L. Sluiter, of Sluiter, Van Gessel, Winther and Carlson, P.C., represented Respondent. The hearing was held on November 9, 2011.

The Tribunal finds that it has jurisdiction over the claim for real property exemption. The Tribunal finds that it does not have jurisdiction over the claim for personal property exemption. In that regard, Michigan is a notice pleading state and Petitioner failed to properly plead a claim relative to its personal property exemption. More specifically, a petition to the Tribunal, under TTR 240(2)(c), shall contain "[a] description of the matter in controversy, including type of tax, the year or years involved, and, in a property tax appeal all of the following information . . . ." Under TTR 240(2)(d), a petition to the Tribunal shall also include "a statement of the amount in dispute . . . ." In its Petition, Petitioner did not supply the Tribunal with the parcel number or the amount in dispute with regard to its personal property exemption claim. The personal property

assessment on the roll was not provided in order to compute the amount in dispute. Further, by not providing the personal property parcel number, Petitioner failed to describe the matter in controversy.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did not prove by a preponderance of the evidence that the subject property is exempt from taxation, pursuant to MCL 211.7n, MCL 211.7o, or MCL 211.7s. As such, the subject property's true cash values (TCV), state equalized values (SEV), and taxable values (TV) are:

Parcel Number	Year	TCV	SEV	TV
41-17-24-102-037	2009	$395,200	$197,600	$197,600
41-17-24-102-037	2010*	$395,200	$197,600	$197,007
41-17-24-102-037	2011*	$359,000	$179,500	$179,500

*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 2010 and 2011 are automatically added to this petition.

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property, Genesee Christian Day care Services, Inc., d/b/a Happy Elephant Child Care Centers ("Happy Elephant"), which consists of a day care/preschool facility, is exempt from taxation under MCL 211.7n, MCL 211.7o, or MCL 211.7s for the 2009-2011 tax years. Petitioner contends that its real property is entitled to an exemption from taxation as an educational, charitable or religious organization. (Transcript, p. 5;

case file). In Petitioner's original Petition and in its Motion for Summary Disposition, it requested an exemption from taxation under MCL 211.7n or MCL 211.7o. At the hearing on this matter, Petitioner requested an exemption for "religion," which would fall under MCL 211.7s.

PETITIONER'S EXHIBITS

P-1. Articles of Incorporation of Genesee Christian Day care Services, Inc.

P-2. IRS Return of Organization Exempt From Income Tax for tax year 2009.

P-3. Correspondence, dated March 31, 1978, from the Internal Revenue Service granting an exemption from federal income taxation.

P-4. Correspondence, dated June 1, 1978, from the Michigan Department of Treasury granting an exemption from sales and use taxation.

P-5. Preschool at Happy Elephant General Information.

P-6. Happy Elephant Child Care Centers, Inc. Policy Statement.

P-7. Happy Elephant Child Care Centers, Inc. Program Philosophy.

PETITIONER'S WITNESSES

Thomas Edward Case

Thomas Edward Case, President of Genesee Christian Child Care Centers, Inc., was Petitioner's first witness. Mr. Case testified that Genesee Christian Child Care Centers, Inc. was formed in 1972 or 1973 and that the City of Wyoming location opened in 1986. He testified that no officers of the day care were paid a salary; however, the directors, cook, and teachers were paid for their services. (Transcript, pp. 13-14.)

Mr. Case testified that Happy Elephant Child Care Centers charged a fee of $160.00 per week for day care/preschool services. He also testified that a competing day care down the street charged a fee of $170.00 per week. (Transcript, p. 14.)

With regard to the instillation of sound Christian principles by Happy Elephant to its charges, presented in Petitioner's Articles of Incorporation (P-1), Mr. Case testified that the day care celebrated Christian holidays, said a thank you prayer before meals and sang songs. (Transcript, pp. 14-15.) However, Mr. Case further testified that the day care did not offer religious training or indoctrinate children into Christianity. He testified that the day care was non-denominational and was not affiliated with any church. (Transcript, pp. 18-19.) Upon questioning by Respondent, Mr. Case testified that the day care does not provide transportation from itself to the city of Wyoming Public Schools. (Transcript, p. 16.) He testified that he "would suspect" that the City of Wyoming schools might provide busing for children that attend the day care and then have to go to the local school district. He testified that not all the children at the day care could utilize busing as some children went to other school districts than the local one. (Transcript, p. 12.) He further testified that Happy Elephant did not provide kindergarten classes at its City of Wyoming location as there was not enough interest. (Transcript. p. 11.)

With regard to the fee structure at Happy Elephant, Mr. Case testified that the center has structured its payment so that a parent on state aid would have to pay 25 cents per hour as a co-pay for day care. (Transcript, p. 14.) He further testified that about 70% of the children attending day care pay full price for its services and about 21 of the 106 children at the Wyoming location were currently receiving state aid. (Transcript, pp. 16-17.) Upon questioning by Respondent, Mr. Case answered in the affirmative that Happy Elephant receives 100% of its stated fees whether from the State, the parent, or some other organization. (Transcript, p. 18.)

Lora LaBean

Lora LaBean is the manager of the Genesee Christian Child Care Centers, Inc. and all of the various locations of Happy Elephant Child Care Centers. (Transcript, p. 22.) She testified that the local public school district buses did sometimes ("don't know this season or not") transport children to and/or from the child care center and that additional children are transported by their parents or by cab. (Transcript, p. 22.) Upon direct examination, Ms. LaBean was asked, if a child attends a Catholic School, how does that child get to school? She answered that "the parents sometimes transport children themselves, but we do not transport." (Transcript, p. 22.)

Ms. LaBean testified that Happy Elephant's rates are the lowest in the area and that the rates were set so that those who cannot afford day care may receive it. She confirmed that Happy Elephant charged $160.00 per week for day care/preschool and that another day care down the street charged $170.00 per week. She testified that Happy Elephant charged its attendees by the hour and that other day care centers did not do so. Instead, the other day cares expected a flat fee per week, whether or not the day care was utilized by the parent for all the hours in the week. (Transcript, p. 25.)

Ms. LeBean testified regarding the additional 25 cents a parent may owe the center if it receives public assistance. She testified that the 25 cents would be paid by another agency and/or the day care may set up a payment plan. Ms. LaBean indicated that Happy Elephant often referred parents to other social agencies that might pay the additional amount owed. Transcript, pp. 25, 30.)

Ms. LaBean testified that the day care did not indoctrinate the children into Christianity, that it was not affiliated with any church, and that it did not teach any fundamentalism or Catholicism. (Transcript, p. 26.) She testified that the center did celebrate Christian holidays

and presented the manger scene at Christmas and the resurrection at Easter. (Transcript, pp. 26-27.)

Upon questioning from the Tribunal, Ms. LaBean testified regarding the educational component of the Happy Elephant preschool. She testified that the preschool has a certified preschool teacher who teaches the alphabet, numbers, introduction to reading and nutrition. She also indicated that literacy was taught to the infants and toddlers as needed. (Transcript, p. 31.)

PETITIONER'S ARGUMENT

Petitioner contends that the subject property, which consists of a day care/preschool facility, is exempt from taxation under MCL 211.7n, MCL 211.7o, or MCL 211.7s, for the 2009-2011 tax years. Petitioner contends that it is entitled to an exemption from taxation as an educational, charitable, or religious organization, though the exemption as a religious organization was not related by Petitioner to any statute or case law.

Petitioner filed Non-Profit Articles of Incorporation and contends that such Articles of Incorporation indicated that "the corporation was formed to engage in the operation of day care centers for the care of young children of needy parents and other working parents regardless of race, who did not have the means or opportunity to provide care for their children during the day." (P-1) In addition, the corporation was formed "[to] develop and administer a program for young children that promotes morality and instills sound Christian principles." (P-1)

Petitioner presented as an exhibit a copy of its 501(c)(3) designation from the Internal Revenue Service dated March 31, 1978. (P-3) Petitioner further provided the Tribunal with a copy of a letter from the Michigan Department of Treasury granting it an exemption from sales and use tax dated June 1, 1978. (P-4) Petitioner claims that Genesee Christian Child Care

Centers meets three of the four criteria for an exemption from property taxation, as determined by the appellate courts of the State of Michigan: the property is owned and occupied by Petitioner, Petitioner is a non-profit corporation, and the property is used solely for the purpose for which Petitioner was incorporated. Petitioner contends that the issue to be determined by the Tribunal is whether or not Petitioner is an educational, charitable, or religious organization entitled to an exemption from property taxation, which Petitioner claims it is. (Transcript, p. 5; case file.)

RESPONDENT'S ARGUMENTS

Respondent contends that the subject property is not entitled to an exemption from taxation under MCL 211.7n or MCL 211.7o as an educational or charitable organization. Respondent contends that the property is not entitled to an exemption as a religious organization. Respondent's position is that Happy Elephant is not a charitable organization as the day care center receives 100% compensation for each child who attends. Respondent contends that whether the day care fees are paid by the parent, state, or some other combination of funding, the day care always remains whole. Further, even though Happy Elephant has a religious name and may celebrate some religious holidays, such does not make it a religious organization. Also, Respondent contends that Happy Elephant is not an educational organization given that it does not relieve any public burden since, at the Wyoming location, it does not provide anything beyond preschool.

RESPONDENT'S EXHIBITS

Respondent did not enter any exhibits into the record at the hearing on this matter.

RESPONDENT'S WITNESSES

Respondent did not call any witnesses at the hearing on this matter.

STIPULATED FINDINGS OF FACT

1. "Genesee Christian Day care Service, Inc., d/b/a Happy Elephant Child Care Centers was incorporated in Michigan on March 10, 1976."
2. "(a) Among the purposes for which the corporation was organized was to engage in the operation of day care centers for the care of young children of needy parents and other working parents regardless of race, who do not have the means or opportunity to provide care for their children during the day."

   (b) To develop and administer a program for young children which promotes morality and instills sound Christian principles. Said corporation is organized and operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954. No part of the net earnings of the corporation shall inure to the benefit of or be distributed to its members, trustees, officers or other private persons."
3. "At the present time, Happy Elephant operates two child care centers in Flint Township, Genesee County, Michigan; one child care center in Delta Township, Ingham County, Michigan; one child care center in the City of Wyoming, Kent County, Michigan."
4. "Genesee Christian Day care Services, Inc., received an exemption from federal taxes from the Internal Revenue Service on March 31, 1978 and was exempted from sales and use taxes by the Michigan Department of Treasury on June 1, 1978."
5. "That as of September 26, 2011, there were 450 children attending all of the child care centers operated by Happy Elephant. As of that date, there were 106 children attending the day care center in the City of Wyoming. Happy Elephant charges fees for infants/toddlers at

$4.00 per hour and for pre-school and older children at $3.25 an hour. Seventy percent (70%) of children (parents) pay full cost for services. No fees are completely waived; grants and public assistance pay for the balance."

6. "The number of children attending pre-school in all of the centers was 229; 47 of this number were attending pre-school at the Wyoming Center."
7. "At the present time, there are no children attending a certified kindergarten program; however, in the past, Happy Elephant has provided this program for additional charges, due to the economy, the program has been temporarily suspended. Happy Elephant does not have an agreement with any public school district to provide Kindergarten for any students."
8. "The number of children receiving state assistance to defray the costs of day care is 130 for all the centers; there are 21 children receiving state assistance presently attending the Wyoming Center."
9. "The number of children who attend elementary school and who are picked up by a bus at all the centers is 40; the number of children who are attending elementary school out of the Wyoming Center and are picked up and brought back by a school bus is 17. Happy Elephant does not provide busing for any students attending any public school."
10. "Genesee Christian Child Care Centers meet three of the four criteria as determined by the appellate courts of this state in that the premises are owned and occupied by Petitioner, Petitioner is a Michigan Non-Profit Corporation, and the property is used solely for the purpose for which the Petitioner was incorporated and formed. The issue to be decided by the tribunal is whether or not Petitioner is an educational and/or charitable organization entitled to an exemption from property taxation."

Petitioner provided the Tribunal with some additional facts requested by the Tribunal in a conference call between Petitioner, Respondent, and the Tribunal Judge. At the hearing on this matter, Respondent stipulated to the entry into the record of these additional facts as follows:

11. "Happy Elephant offers kindergarten at our five locations; however, in 2009-2010 at Wyoming, there was not enough interest in the kindergarten program to offer it."
12. "All of the proceeds that Happy Elephant receives stay within the nonprofit corporation."
13. "No (none of the children receive free child care), however, reduced our rates three (3) years ago to closer reflect the rates paid for eligible families from the State of Michigan. Example: Infant/Toddler age children with Happy Elephant rates are charged $4.00 per hour for care. If a child's family received state assistance and they are granted child care services at the maximum, the state will pay [$3.75] per hour for care. The family would pay a co-pay of $.25 per hour for care."
14. "At the Wyoming site the charge for a 40-hour week would be $160.00. (Straight charge of $4.00 per hour – less depending on hours scheduled/used). A comparison of three locations within the area; the lowest charges $170.00 and the highest $229.00 for a 40-hour week. The tuition in Lansing and Flint is comparable."
15. "Happy Elephant holds values and traditions that are Christian in nature. We treat Christian Holidays as such. We do not withhold the manger scene from our Christmas Programs for the families. We include simple Bible songs in our circle and music times with the children. A simple "Thank You" prayer is offered before each meal service.

The preschool lesson time includes a complete school year series called Shining Stars. It is designed to show each child that they are a unique, God created, individual. Time is spent

each day in theme units which include; friendship, compassion, cooperation and kindness. School readiness lessons are taught each day which include; math, reading and writing skills along with exercise and nutrition lessons. We are just introducing computer logs to our sites as well.

We have a large group of school age children that attend before and/or after public school and allow freedom to play, learn and discover.

Our goal is to equip children with knowledge and introduce the skills necessary to develop confidences [as] they enter the 'BIG' world."

ISSUES AND 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 Township, Washtenaw County,* 416 Mich 340, 348-349; 330 NW2d 682 (1982), *APCOA, Inc v Dep't of Treasury,* 212 Mich App 114, 119; 536 NW2d 785 (1995). 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.

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax. *Id.* at 207.

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).)

In the instant case, Petitioner asserts that the subject property is exempt from property taxation because Petitioner is an educational institution (MCL 211.7n), a charitable organization (MCL 211.7o), or a religious organization (MCL 211.7s). (Transcript, p. 5; case file.) Educational institutions and charitable and religious organizations have already been recognized as exempt classes. Because Petitioner is attempting to establish membership in those classes, the preponderance of evidence standard applies. Also, Petitioner alleges that it is entitled to an exemption from real property tax due to its status as a 501(c)(3) organization exempt from federal taxation. However, the Michigan standard for exemption is more rigorous than the

federal standard: "the fact that a petitioner may qualify for tax exempt status under Federal law, i.e., Section 501(C)(3) of the Internal Revenue Code, creates no presumption in favor of an exemption from property taxes.' *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748), 752 (n 1) (1940)." See also *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968), which states: "The institute's exemption from Michigan ad valorem tax is not determinable by its qualification as an organization exempt from income tax under section 501(c)(3) of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act."

1. **Is Petitioner an educational institution eligible for tax exempt status under MCL 211.7n?**

Petitioner alleges that it is entitled to an exemption from property tax under MCL 211.7n, which states: The exemption for real 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.) Petitioner must meet three criteria to qualify for an exemption under §7n:

> (1) The real estate must be owned and occupied by the exemption claimant;
> (2) The exemption claimant must be a non profit **educational** institution, and
> (3) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.*
> (Emphasis added).
>
> *Grosse Pointe Academy v Township of Grosse Pointe*, unpublished opinion per curiam of the Court of Appeals, decided November 2, 2004 (Docket No. 248340), citing *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944).

*The requirement that the claimant be incorporated under Michigan law is no longer valid, having been found to be unconstitutional as it denied equal protection to institutions registered out-of-state. *OCLC Online Computer Library Center, Inc v City of Battle Creek,* 224 Mich App 608, 612; 569 NW2d 676 (1997), citing *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp,* 186 Mich App 511, 515; 465 NW2d 14 (1990).

In the instant case, the parties agree that Petitioner meets the first and third criteria. As for the second criteria, the parties agree that Petitioner is a nonprofit institution; however, they disagree as to whether Petitioner is an educational institution. (Stipulated Findings of Fact, No. 10).

The court in *Ladies Literary Club v City of Grand Rapids,* 409 Mich 748; 298 NW2d 422 (1980), specified two requirements that must be met in order for an organization to qualify for an educational exemption from taxation:

> 1. An institution seeking an educational exemption must fit into the general scheme of education provided by the state and supported by public taxation.
>
> 2. The institution must contribute substantially to the relief of the educational burden of government. *Id,* at 755-76; 298 NW2d at 426.

Here Petitioner is alleging that Happy Elephant preschool fits into the general scheme of education provided by the state and supported by public taxation: "Time is spent each day in theme units which include; friendship, compassion, cooperation and kindness. School readiness lessons are taught each day which include; math, reading and writing skills along with exercise and nutrition lessons. We are just introducing computer logs to our sites as well." (Stipulated Findings of Fact, No. 16). It also alleges that Happy Elephant relieves the educational burden of government by providing preschool services and by having a contract with the public school to provide busing. The Tribunal finds that providing preschool does not fit into the scheme of

education provided by the state and supported by public taxation. It further does not relieve any governmental, educational burden. A preschool does not qualify as an educational institution supported by taxation as the state does not require preschool. Further, as preschool is not state mandated, the child care center does not relieve the government's educational burden. *In Association of Little Friends, Inc v City of Escanaba*, 130 Mich App 302; 360 NW2d 602 (1984), the Court held that a child care center for preschool children did not qualify as an educational institution. *Association of Little Friends* at 308; 360 NW2d at 605. There the Court applied the test from *Ladies Literary Club*, and reasoned that the State did not require preschool; therefore, the child care center did not relieve the government's educational burden. *Id.*

Petitioner's argument that Happy Elephant relieves the educational burden of government by having a contract with the state of Michigan to provide busing to and from the public school, makes little sense. Happy Elephant does not provide busing, which if it did, might in some manner relieve a de minimus governmental burden. In the alternative, a contract for busing from Happy Elephant to and from public school, **provided by the public school**, does not relieve any governmental burden of educating children. Indeed, by providing busing to a day care center, the governmental burden increases.

For the reasons stated above, the Tribunal finds that Petitioner did not prove by a preponderance of the evidence that it fits into the general scheme of education provided by the state and supported by public taxation or that it contributes substantially to the relief of the educational burden of government. Therefore, the Tribunal finds that Petitioner is not an educational institution and is not entitled to a property tax exemption under MCL 211.7n.

2. Is Petitioner a charitable institution eligible for tax-exempt status under MCL 211.7o (Transcript, p. 5; case file)

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

> (1) Real or personal property owned and occupied by a nonprofit **charitable** institution while occupied by that **charitable** institution solely for the purposes for which that nonprofit **charitable** institution was incorporated is exempt from the collection of taxes under this act. (Emphasis added.)

In *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), the Supreme Court presented the test for determining if an organization is a charitable one under MCL 211.7o (such is the same test for an educational exemption) and required that:

> (1) the real estate must be owned and occupied by the exemption claimant;
> (2) the exemption claimant must be a nonprofit **charitable** institution; and
> (3) the exemption exists only when the building and other property thereon are occupied by the claimant solely for the purpose for which it was incorporated. (Emphasis added.)

In the instant case the parties again agree that Petitioner meets the first and third criteria. As for the second criteria, the parties agree that Petitioner is a nonprofit institution (Stipulated Findings of Fact, No. 10); however, they disagree as to whether Petitioner is a charitable institution.

The first step in determining whether an organization is charitable is to understand the definition of "charity." The Michigan Supreme Court established the following definition of "charity":

> Charity is a **gift,** to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. *Retirement Homes, supra* at 348. (Emphasis added.)

In order to determine if the child care center is entitled to a property tax exemption under MCL 211.7o, Petitioner must prove by a preponderance of the evidence that it is a "charitable institution." In this regard, the Michigan Supreme Court concluded that the "institution's activities as a whole must be examined." (See *Michigan United Conservation Clubs v Lansing Township*, 423 Mich 661; 378 NW2d 737 (1985) ("*MUCC*"), which held that "[t]he proper focus in this case is whether MUCC's activities, *taken as a whole*, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons." (Emphasis added.) (*Id*. at 67). In *Michigan Baptist Homes and Development Company v City of Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976), the Michigan Supreme Court stated that "exempt status requires more than a mere showing that services are provided by a nonprofit corporation." (*Id.*, p. 670) The Court also stated that to qualify for a charitable or benevolent exemption, the use of the property must ". . . benefit the general public without restriction." (*Id.*, p. 671)

Whether an institution is a charitable institution is a fact-specific question that requires examining the claimant's overall purpose and the way in which it fulfills that purpose. In this regard, the Michigan Supreme Court held in *Wexford, supra*, that several factors must be considered in determining whether an entity is a "charitable institution for purposes of MCL 211.7o":

(1) a "charitable institution" must be a nonprofit institution.

(2) a "charitable institution" is one that is organized chiefly, if not solely, for charity.

(3) a "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.

(4) a "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.

(5) a "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.

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

Each element of the *Wexford* test will be discussed as follows:

(1) *a "charitable institution" must be a nonprofit institution.*

(5*) a "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.*

Both Petitioner and Respondent have deemed the subject organization to be a nonprofit institution that charges no more than what is needed for successful maintenance. "No part of the net earnings of the corporation shall inure to the benefit of or be distributed to its members, trustees, officers or other private persons." (Stipulated Findings of Fact No. 2: "All the proceeds Happy Elephant receives stay within the nonprofit corporation." (Stipulated Findings of Fact, No. 13.) (Transcript, pp. 12-13.)

(2) *a "charitable institution" is one that is organized chiefly, if not solely, for charity.* Petitioner contends that it is a charitable institution as it gives low cost day care to "young children of needy parents and other working parents regardless of race, who do not have the

means or opportunity to provide care for their children during the day." (Stipulated Findings of Fact, No. 2, P-1.) The Tribunal finds that Petitioner does not provide low cost day care to needy families. Happy Elephant charges $160.00 per week for day care/preschool and a competing day care down the street charges $170.00 per week. (Transcript, p. 14.) Happy Elephant thus seems to compete in the general marketplace regarding the cost of its services. Furthermore, Petitioner does not provide any free day care to those who are unable to pay for it, in that it charges $4.00 per hour for families that can pay that amount or receives $3.75 in the form of state assistance from families that can't afford the $4.00 per hour. The additional 25 cents due to Happy Elephant by state-supplemented families is paid by another organization and/or the day care will provide a payment plan. In any case, the day care is always made whole in its compensation. (Transcript, pp. 17-18, p. 25, p. 30.) As stated above, charity is a "gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons . . . ." *Retirement Homes*, *supra.* In the matter before us, no "gift" was given in that day care recipients seem to be chosen based on their ability to pay in full, by some method or another.

The Happy Elephant Child Care Centers, Inc. Policy Statement (P-6) states its tuition policies as follows: "**Late Charge** if your child is not picked up by 6:00 p.m. The charge is $5.00 for 5 additional minutes late and $5.00 for each additional 5 minutes or part of 5 minutes thereafter. **Payment**: Fees must be paid by check or money order on the first day of attendance each week. Scheduled hours are charged hours. The hourly rate pertains to any part of an hour….A $15.00 late payment fee will be added to any to any [sic] tuition not paid on the first day of attendance each week . . . . Failure to stay current with child care fees will result in immediate dismissal." (P-6) The Tribunal finds that the Happy Elephant Policy Statement does not provide charity to the parents of day care recipients. Ms. LaBean in her testimony stated that

Happy Elephant charges by the hour, for hours scheduled, which is unique in the day care business. (Transcript, pp. 25, 28.) However, the policy statement reflects no flexibility toward the changing school or work schedule, therefore changing day care schedule, of a working parent or one who might be attending classes. Additionally, the day care center charges late fees for being even five minutes late to pick up a child and also **immediately dismisses a child for failure to keep up with the day care fees.** The previous asserted policy statement does not appear to be "a gift" or in any way charitable in nature.

(3) *a "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.* The Tribunal finds that Petitioner does not serve any person who needs day care. Does the day care accept anyone who walks in the door, or does it accept only the families that can pay in full and/or receive state aid + 25 cents per hour so that the day care can receive full compensation? The Tribunal finds the latter to be the case. In *Wexford*, *supra* at 216.

> Petitioner (a non-profit corporation that provides medical care) to the indigent **offers free and reduced cost medical care to indigent persons with no restrictions**. It operates under an open-access policy under which **it accepts any patient who walks through the door**, with preferential treatment given to no one. Although petitioner sustains notable financial losses by not restricting the number of Medicare and Medicaid patients **it accepts, it bears those losses rather than restricting its treatment of patients who cannot afford to pay.** (Emphasis added.)

In other words, Wexford Medical Group accepted all patients, even those who could not pay at all, and thus was granted an exemption from property tax as a charitable institution. In the matter before us, it does not appear that Happy Elephant accepts those who cannot afford to pay

for day care services, and in fact immediately dismisses a child for failure to keep up with day care fees. (P-6).

(6) *a "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.* This provision of *Wexford, supra,* does not apply to the subject property as it doesn't devote money to charitable activities, nor is its overall nature charitable, as determined above.

(4) *a "charitable institution* ***brings people's minds or hearts under the influence of education or religion****; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.* (Emphasis added.) We have already determined that Happy Elephant does not bring people's minds and hearts under the influence of education. The Tribunal further finds that Happy Elephant does not bring people's minds or hearts under the influence of religion.

Petitioner alleges that the subject property is entitled to an exemption from taxation because it is an educational, religious, or charitable organization. (Transcript, p 5; case file.) The Tribunal opines that Petitioner is alleging it is entitled to an exemption from taxation for religion by bringing people's "hearts and minds under the influence of . . . religion," under *Wexford, supra,* or in the alternative, under MCL 211.7s, which shall be discussed subsequently.

The Genesee Christian Child Care Centers, Inc. Articles of Incorporation state: The corporation was organized "(b) to develop and administer a program for young children which promotes morality and instills sound Christian principles." (P-1) In his testimony, Mr. Case

stated "we do a little thank you prayer for meals. We have many songs that can be introduced….We observe the Christian holidays." (Transcript, pp. 14-15.) Ms. LaBean testified that the preschool has a program called "Shining Stars and it's a morality lesson in teaching children that they are a special unique creation of God . . . ." She also testified that the Happy Elephant celebrates Christmas with a manger scene and Easter with the resurrection. (Transcript pp, 26-27.)

Ms. LaBean answered in the affirmative, on direct examination, that Happy Elephant is not affiliated with any church and that it doesn't try and teach any fundamentalism or Catholicism. (Transcript, p. 26.) She further testified that "We are not dominated [sic], we don't indoctrinate against the faith of their parents . . . ." Mr. Case answered in the affirmative, on direct examination, that Happy Elephant does not provide religious training or indoctrination nor is it affiliated with any church or part of any denomination. (Transcript, pp. 18-19.)

Other than decorating with a manger scene and the resurrection, the Tribunal does not find that Happy Elephant brings people's minds or hearts under the influence of religion. The day care is not affiliated with any church, is non-denominational and does not indoctrinate. The Tribunal opines that the day care might try to instill "Christian" or "positive" values as a matter of common sense, but not enough to bring one's mind and heart under the influence of religion.

The final element of section (4) of the *Wexford* test inquires whether the "*charitable institution" relieves a governmental burden.* We have already determined that Happy Elephant does not relieve any governmental burden as preschool is not required by the State of Michigan, nor does Happy Elephant provide any busing to/from public school to the day care. Therefore, the Tribunal finds that Petitioner is not a charitable organization and that it is not entitled to a property tax exemption under MCL 211.7o.

3. <u>Is Petitioner a religous organization eligible for tax exempt status under MCL 211.7s?</u>

Again, Petitioner is requesting an exemption from real property taxation as an educational, charitable, or religious organization. MCL 211.7s is the Michigan statute that applies to the religious exemption. MCL 211.7s states:

> Houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and any parsonage owned by a religious society of this state and occupied as a parsonage are exempt from taxation under this act. Houses of public worship includes buildings or other facilities owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the society.

Petitioner is clearly not a religious organization under MCL 211.7s as it is not a house of public worship, parsonage, or building used by a religious society for teaching the religious truths of the society. Petitioner is not entitled to a religious exemption from taxation under *Wexford, supra*, or MCL 211.7s.

For the reasons stated above, the Tribunal finds Petitioner fails to prove, by a preponderance of the evidence, that it is an educational, charitable, or religious organization exempt from ad valorem property taxation for tax years 2009-2011.

JUDGMENT

IT IS ORDERED that the subject property is not exempt pursuant to MCL 211.7n, MCL 211.7o, or MCL 211.7s.

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, 2008, at the rate of 3.31% for calendar year 2009, (ii) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (iii) after December 31, 2010, at the rate of 1.12% for calendar year 2011 and (iv) after December 31, 2011, at the rate of 1.09% for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: December 22, 2011 By: Preeti Gadola