Michigan Crossroads Council,
Petitioner,

v

Big Creek Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 20-002675

Presiding Judge
Steven M Bieda

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S REQUEST FOR COSTS

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal disputing Respondent's denial of its claim for exemption from ad valorem property taxation under MCL 211.7q for the 2020 tax year.

On October 20, 2020, Petitioner filed a motion requesting that the Tribunal enter summary disposition in its favor. In the motion, which was filed pursuant to MCR 2.116(10), Petitioner contends that there are no genuine issues of material fact as to its eligibility for the requested exemption. As such, Petitioner is entitled to judgment as a matter of law. Petitioner also requested that the Tribunal award it costs, fees, and other such relief as the Tribunal believes is just and fair.

Respondent has not filed a response to the motion.

PETITIONER'S CONTENTIONS

Petitioner contends that Respondent has improperly read an occupancy requirement into MCL 211.7q, and that the only requirements for qualification are that (1) the property must be owned by a scouting organization, and (2) at least 50% of the members of the organization or association must be residents of the state of Michigan. The only reference to occupancy is found in MCL 211.7q(3), and that section is only applicable upon petition to the county board of commissioners for waiver of the residence requirement under subsection (1). The exemption is limited to 480 times the number of boy scout organizations consolidated after December 30, 2008, and Petitioner, having been consolidated with ten other scouting organizations, is entitled to

claim up to 5,280 acres of tax-exempt land. The subject property is comprised of two parcels that total 720 acres.[1]

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]

Motions for Summary Disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."[3] The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,[4] provided the following explanation of MCR 2.116(C)(10):

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
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> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.
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> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
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> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.

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[1] The subject parcels actually comprise 640 acres, not 720 as stated by Petitioner in its motion.
[2] See TTR 215.
[3] *Id*.
[4] *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).

> Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[5]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[6] In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary judgment."[7] "Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial."[8]

CONCLUSIONS OF LAW

Having given careful consideration to Petitioner's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10), the Tribunal finds that granting the motion is warranted at this time.

The General Property Tax Act ("GPTA") provides that "all property . . . within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."[9] There is no dispute that the subject property, but for any exemption afforded, is subject to ad valorem taxation.[10] Exemption statutes are subject to a rule of strict construction in favor of the taxing authority.[11] The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption.[12] Nevertheless, tax exemption statutes are to be interpreted according to ordinary rules of statutory construction.[13] "[T]he preponderance of the evidence standard applies when a petitioner attempts to establish membership in an already exempt class."[14] Nonprofit religious and educational organizations, nonprofit charitable institutions, parsonages, and houses of public worship have all been recognized as exempt classes.[15]

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[5] *Id*. at 361-363. (Citations omitted.)
[6] *West v General Motors Corp*, 469 Mich 177 (2003).
[7] *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 1 (1994).
[8] *Id.*
[9] See MCL 211.1.
[10] See *Michigan Bell Telephone Company v Dep't of Treasury*, 229 Mich App 200; 582 NW2d 770 (1998).
[11] See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661; 378 NW2d 737 (1985) and *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 MW2d 422 (1980).
[12] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490 (2002).
[13] See *Inter Cooperative Council v Dep't of Treasury*, 257 Mich App 219 (2003).
[14] *ProMed Healthcare*, 249 Mich App at 494-495.
[15] See Article 9, Section 4 of the Michigan Constitution; MCL 211.7o; and MCL 211.7s.

MCL 211.7q creates an exemption for boy scout and like organizations. It states, in pertinent part, that "real property owned by a boy or girl scout or camp fire girls organization . . . is exempt from the collection of taxes under this act, if at least 50% of the members of the association or organization are residents of this state."[16] The exemption is limited and "not to exceed 480 acres for each individual boy or girl scout or camp fire girls organization . . . ."[17] However,

> if a boy or girl scout or camp fire girls organization . . . reorganizes, merges, affiliates, or in some other manner consolidates with another boy or girl scout or camp fire girls organization . . . after December 30, 2007, the total exemption available under subsection (1) to the consolidated or surviving entity shall be 480 acres times the number of individual boy or girl scout or camp fire girls organizations . . . that took part in the reorganization, merger, affiliation, or consolidation.[18]

Subsection (3) of the statute states that "the county board of commissioners may waive the residence requirement under subsection (1) while the real property is occupied by the association or organization solely for the purpose for which the association or organization was incorporated or established."[19]

Although Respondent has not filed a response to Petitioner's motion, it stated in its answer to the petition that Petitioner does not qualify for exemption under MCL 211.7q "because all charitable organizations must own and occupy the property to be entitled to the exemption claimed." The Tribunal agrees with Petitioner that Respondent has improperly read an occupancy requirement into the statute that does not exist in its plain language. The only requirements under the clear and unambiguous language of the statue are ownership by an eligible organization and residency of at least 50% of the organization's members in the State of Michigan. The residency requirement can be waived under subsection (3) if the property is occupied by the organization solely for the purpose for which it was incorporated.

The documentation filed with Petitioner's Motion for Summary Disposition, specifically, the affidavit of its CEO, Donald D. Shepard, Jr., establishes that Petitioner is a scouting organization that was incorporated in Michigan on February 1, 2012, and that it is the lone authorized council for the Boy Scouts of America in the Lower Peninsula of Michigan. The affidavit further establishes that Petitioner consolidated with ten other Michigan boy scout councils, one of which is the record owner of the property at issue, Lake Huron Area Council 265. The affidavit also establishes that "most, if not all, of [Petitioner's] membership is comprised of individuals who reside permanently in the State of Michigan." The Officer's Certificate filed with the petition establishes that the eleven organizations were consolidated after December 30, 2007, and that the total acreage being claimed as exempt by Petitioner is 5,177.56 acres. As a consolidated

[16] MCL 211.7q(1).
[17] MCL 211.7q(2).
[18] *Id*.
[19] MCL 211.7q(3).

organization comprised of eleven individual organizations, Petitioner is entitled to exemption on not more than 5,280 acres of land.

Given the above, the Tribunal finds that Petitioner has met its burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. Respondent has failed to rebut Petitioner's documentation or otherwise establish the existence of a genuine issue of material fact, and as such, the Tribunal finds that Petitioner is entitled to judgment as a matter of law under MCR 2.116(C)(10).

As for Petitioner's request for costs, the Tribunal "may, upon motion or its own initiative, award costs in a proceeding . . . ."[20] The Michigan Court Rules and Administrative Procedures Act provide the Tribunal with some criteria in determining whether an award of costs is appropriate, but the Court of Appeals has held that costs are entirely within the Tribunal's discretion, and it is not limited to circumstances where the requesting party shows good cause or the action or defense was frivolous.[21] The Tribunal is nevertheless generally hesitant to award costs, and usually reserves such action for cases in which frivolity or other good cause exists.

"A claim is frivolous when (1) the party's primary purpose was to harass, embarrass, or injure the prevailing party, or (2) the party had no reasonable basis upon which to believe the underlying facts were true, or (3) the party's position was devoid of arguable legal merit."[22] " "A claim is not frivolous merely because the party advancing the claim does not prevail on it."[23] A court must determine whether a claim or defense is frivolous on the basis of the circumstances at the time it was asserted."[24] "[A] claim is devoid of arguable legal merit if it is not sufficiently grounded in law or fact, such as when it violates basic, longstanding, and unmistakably evident precedent."[25]

Given the facts and circumstances presented in this case the Tribunal finds that Respondent's defense was not interposed for any improper purpose and it was sufficiently grounded in fact. Further, the Tribunal cannot conclude that it violates basic, longstanding, and unmistakably evidence precedent. As such, and in the absence of a showing of other good cause to justify the granting of Petitioner's request, the Tribunal is not satisfied that costs are warranted in the instant appeal.

Therefore,

Parcel Nos. 001-126-001-00 & 001-126-002-00 shall be granted an exemption under MCL 211.7q for the 2020 tax year; the amount of the exemption is 100%.

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[20] TTR 209.
[21] See *Aberdeen of Brighton, LLC v Brighton*, unpublished per curiam opinion of the Court of Appeals, issued October 16, 2012 (Docket No. 301826), which noted that "the term 'may' is permissive and is indicative of discretion." *Id*. citing *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492 (2007).
[22] *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266-267 (1996) citing MCL 600.2591(3)(a).
[23] *Adamo Demolition Co v Dep't of Treasury,* 303 Mich App 356, 368 (2013).
[24] *Meisner Law Group, PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 732 (2017).
[25] *Adamo Demolition,* 303 Mich App at 369 (2013) (quotation marks and citations omitted).

The property's taxable value (TV), as established by the Board of Review for the tax year at issue, is as follows:

Parcel Number: 001-126-001-00

Year	TV
2020	$81,617

Parcel Number: 001-126-002-00

Year	TV
2020	$528,718

The property's taxable value (TV), for the tax year at issue, shall be as follows:

Parcel Number: 001-126-001-00

Year	TV
2020	$0

Parcel Number: 001-126-002-00

Year	TV
2020	$0

JUDGMENT

IT IS SO ORDERED.

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

IT IS FURTHER ORDERED that Petitioner's Request for Costs is DENIED.

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[26] 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

[26] See MCL 205.755.

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%, (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%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, and (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this 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 Tribunal with the required filing fee within 21 days from the date of entry of the final decision.[27] 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.[28] You are required to serve a copy of the motion 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.[29] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[30]

A claim of appeal must be filed with the Michigan Court of Appeals 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

[27] See TTR 261 and 257.
[28] See TTR 217 and 267.
[29] See TTR 261 and 225.
[30] See TTR 261 and 257.

decision, it is an "appeal by leave."[31] You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal.[32] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[33]

Entered: November 25, 2020 By _____

ejg

[31] See MCL 205.753 and MCR 7.204.
[32] See TTR 213.
[33] See TTR 217 and 267.