

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

Steve E Elturk/Islamic Organization of North America,
Petitioner,

v

MTT Docket No. 14-002502

City of Warren,
Respondent.

Tribunal Judge Presiding
Steven H Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Islamic Organization of North America (“IONA”), appeals the respondent City of Warren’s denial of its claim for exemption from ad valorem property taxation under MCL 211.7s for the 2014 and 2015 tax years. A hearing was held in the matter on January 26, 2016. Myles B. Hoffert and Paige Harley Bachand, attorneys, appeared on behalf of Petitioner. Caitlin Murphy, attorney, appeared on behalf of Respondent. Petitioner presented testimony from Steve E. Elturk, Imam. Respondent presented testimony from Thomas Agrusa, Assessor.

Based on Respondent’s indication that it was willing to grant Petitioner’s exemption request for the 2015 tax year, the hearing was limited to the 2014 tax year.

SUMMARY OF JUDGMENT

The subject property shall be granted an exemption under MCL 211.7s for the 2014 and 2015 tax years. The property’s taxable value (“TV”) for the tax years at issue shall be as follows:

Parcel Number: 13-17-101-033

Year	TV
2014	\$221,686
2015	\$0

PETITIONER’S CONTENTIONS

Petitioner contends that the subject property is entitled to exemption from ad valorem property taxation for the 2014 and 2015 tax years pursuant to the houses of public worship exemption set forth in MCL 211.7s.

PETITIONER'S ADMITTED EXHIBITS

- P-2: 2014 Petition to Board of Review and Notice of Board of Review Action
- P-3: 2014 Exemption Application
- P-4: Letter from the City of Warren regarding Denial of 2014 Application for Exemption
- P-5: Letter to City of Warren regarding Denial of 2014 Application for Exemption
- P-7: Photographs of subject buildings (pages 13, 14, 16)
- P-8: 501(c)(3) letter from IRS
- P-9: IONA Incorporation documents
- P-10: IONA Bylaws
- P-11: Permit Details and Certificate of Compliance
- P-12: List and pictures of activities held in subject building (pages 38-39, 43-49)
- P-14: Lot Split and Combination Application and Affidavit of Ownership of Land for Lot Split and Combination
- P-15: Lease Amendment
- P-16: Certificate of Survey
- P-17: BS&A Property Information Sheet

PETITIONER'S WITNESSES

Steve E. Elturk

Steve E. Elturk testified that he is the Imam, clergy and president, of the Islamic Organization of North America, which purchased a property located at 28630 Ryan Road in 2005, and converted it into a house of worship. Mr. Elturk testified that it was a challenging process that took approximately two years:

When we bought the property we applied for tax exemption. It was a strip center plaza prior to converting it into a house of worship. So we had to go through the proper procedures to get the site plan approved and proceeding with the hearings so we can obtain the building permit to renovate the building . . . [W]e were denied by the zoning board of appeals and by the—by the planning commission board. The Department of Justice had to step in to make sure that our rights are granted. And after a battle between the city and us we won it in a very narrow, you know, vote, by one vote.¹

In 2010, IONA purchased the subject property with the intent to use it as an auxiliary to the existing temple. Mr. Elturk testified that the property is located across the parking lot from the existing Temple, and was to accommodate various community needs:

Since we've expanded, the present building had become small for us to accommodate the needs of the community. So the expansion would allow us to have more room for our social gatherings, for example, during Ramadan, the month of fasting, we break fast over there. We hold seminars, religious seminars

¹ Transcript, p. 14.

over there. We've just concluded Islamic conflict transformation for the community. We've done many events—interfaith events in the halls. We do have a youth room, activities for the youth to come and learn. We do have a social services section where we serve the community in their, you know, needs in terms of free medical. We do have the preschool that is serving the children of our community. And we plan to have the IONA cafeteria to accommodate, obviously, the large numbers of our community.²

Mr. Elturk testified, however, that one of the primary reasons for purchasing the property was to provide additional parking for Petitioner's congregants, which number approximately one thousand every week. Even prior to acquiring the building, Petitioner had obtained permission from the owners to park there for services.

Although there were still some businesses operating at the time of Petitioner's purchase, the property was not occupied for any commercial use as of December 31, 2013. The lease for the last remaining tenant, Hamdan Foods, ended in November of 2013. It was terminated with the understanding that the business would move to another property owned by Petitioner. Hamdan was still in the process of moving as of December 31, 2013, but the store was mostly empty, with only 10%-15% occupied by leftover items; it not operating the business there.

Petitioner filed its request for exemption from ad valorem property taxation on November 13, 2013. At that time, Petitioner had a certificate of occupancy for 3,300 SF of the subject's larger building, and that portion of the property was being used for adult religious education classes. The rest of the property was vacant, waiting on approval from the planning department, but was intended only for religious use; no other activities were contemplated. The Board of Review's stated reason for denying Petitioner's request was insufficient evidence. Following the denial, Mr. Elturk had several conversations with Mr. Agrusa, and was told by him that it had been determined that the property did not qualify for the exemption.

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is not entitled to exemption from ad valorem property taxation for the 2014 tax year pursuant to the houses of public worship exemption set forth in MCL 211.7s. As for 2015, Counsel indicated at the hearing that having reviewed its records and talked with opposing counsel, Respondent was willing to grant the exemption, and that it was no longer contesting Petitioner's eligibility for that year.

² Petitioner's exemption application also stated that "the proposed property is being used with city occupancy permit and/or intended to be used entirely for the following purposes on non-profit organization basis: (1) social/lecture hall; (2) babysitting; (3) media center; (4) offices for the use of assistant imam, chaplain and other staff members; (5) cafeteria facility and provide food on special events; (6) free community services, counseling and periodical clinic and medical help; (7) general storage; and (8) further modification may be made depending on the needs to serve our community more effectively in the future." *Id.*

RESPONDENT'S ADMITTED EXHIBITS

Respondent's proffered exhibits were not admitted into evidence because it failed to timely serve the same upon Petitioner's representative in accordance with the Tribunal's Rules of Practice and Procedure and the scheduling order entered in this matter on November 19, 2015.

The Tribunal admitted the subject's 2014 record card for purposes of determining the appropriate exemption amount only.

RESPONDENT'S WITNESSES

Thomas Agrusa

Thomas Agrusa testified that he is a Certified Michigan Advanced Assessing Officer who has been employed by the City of Warren assessing department since 1991, and currently serves as its deputy assessor. Mr. Agrusa testified that the subject property has two buildings, the smaller of which has 3,300 square feet. The larger building, a multi-tenant strip center, has 13,200 SF. Mr. Agrusa questioned whether Petitioner's learning center, which is located in the administrative portion of the larger building was actually 3,300 SF, as indicated by the Imam. When asked what he thought the square footage of the area was, Mr. Agrusa testified that he thought it was probably about half of that amount: "It's roughly 1,500 square feet. That was the only portion that I did not observe. You know, I did go to the property as of December 31st of 2013, and again in early January of [2014]."³

On his first visit, Mr. Agrusa observed that the subject buildings were vacant except for the Hamdan Food Market, which was open for business. He walked into the store and asked the clerk if they planned on staying in that location, and was informed that they would be there for a while, but planned on relocating within the month. On the second visit, the market was still operating, and the remainder of the property was vacant. Mr. Agrusa walked the storefront and through the windows was able to observe every unit, with the exception of the administrative portion, which had a divider. Being able to see approximately half of that unit, Mr. Agrusa observed a table and two chairs, but saw no activity: "It was as though the tenants just moved out. Dropped ceiling. It was—it needed to be—I don't want to say remodeled or repaired, because there were dropped ceiling tiles missing. Some of the flooring was missing, so it was in, I would say, disrepair."⁴ On a third visit in February 2014, Mr. Agrusa noted that the food market was gone, and the rest of the building was still vacant.

Mr. Agrusa testified that he believed that Petitioner received site plan approval for the subject property on June 30, 2014. Respondent received building permit applications for electrical, mechanical, plumbing and interior remodeling, all of which were dated August 2014. The certificates of compliance were all dated December 2014 and February 2015. Mr. Agrusa testified that he has a general knowledge of the site plan and building approval process, and that it would not be proper or legal to enter or occupy a building without a certificate of compliance. Mr. Agrusa conducted his first walk-through of the property with the Imam in December 2014, after renovations had been completed.

³ Transcript, p. 101-102.

⁴ Transcript, p. 104.

FINDINGS OF FACT

1. Petitioner is a 501(c)(3) tax exempt organization.
2. Steve E. Elturk is Petitioner's Imam, clergy and president.
3. Petitioner purchased the property located at 28630 Ryan Road in 2005, and converted it into a house of worship.
4. Petitioner purchased the subject property in 2010 with the intent to use it as an auxiliary to the existing house of worship for the following purposes: (1) social/lecture hall, (2) daycare, (3) media center, (4) administrative offices, (5) cafeteria, (6) community service center and periodic medical clinic, and (7) general storage.
5. The subject property is located at 28694 Ryan Road, and is identified as Parcel No. 13-17-101-033. It is adjacent to the existing temple.
6. The subject parcel has a total land area of 1.09 acres, or 82,764 SF. It is improved with a 55,000 SF asphalt parking lot and two commercial buildings that were originally constructed in 1976. The larger building is a multi-tenant strip center with 13,200 SF. The smaller building is a former restaurant with 3,300 SF.
7. Petitioner's congregants have used the subject parking lot for services held at its house of worship since before its acquisition of the property.
8. There were still some leases in effect and businesses operating at the subject property at the time of Petitioner's purchase. The lease for the last remaining tenant, Hamdan Foods, was terminated in November of 2013.
9. As of December 31, 2013, Petitioner had a certificate of occupancy for 3,300 SF of the subject's larger building, and that portion of the property was being used for religious education classes. The rest of the property was vacant, waiting on approval from the planning department.
10. The subject land was attributed a true cash value of \$268,798 in the 2014 tax year. The parking lot had a true cash value of \$29,172 for that year, and the 13,200 SF building had a true cash value of \$336,842.
11. The subject property's taxable value for the 2014 tax year was \$367,080.

APPLICABLE LAW

Houses of Public Worship Exemption under MCL 211.7s

MCL 211.7s creates a property tax exemption for houses of public worship. It provides, as follows:

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. *Id.*

The Michigan Court of Appeals has held that a present use, and not a future intended use, is a necessary prerequisite to exemption under this statute.⁵

CONCLUSIONS OF LAW

The General Property Tax Act (“GPTA”) provides that “all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.”⁶ Thus, there can be no dispute that the property under appeal, but for any exemption afforded it, is subject to taxation under this Act. “Exemption statutes are subject to a rule of strict construction in favor of the taxing authority,”⁷ and taxpayers bear the burden of proving entitlement to an exemption. “[T]he preponderance of the evidence standard applies when a petitioner attempts to establish membership in an already exempt class.”⁸ Nonprofit religious and educational organizations, nonprofit charitable institutions, parsonages, and houses of public worship have all been recognized as exempt classes.⁹

MCL 211.7s unconditionally exempts from ad valorem property taxation all buildings and facilities owned by a religious society, so long as they are “used predominantly for religious services or for teaching the religious truths and beliefs of the society.”¹⁰ The Michigan Court of Appeals has held that a present use, and not a future intended use, is a necessary prerequisite to exemption under this statute.¹¹ Specifically, the Court held “that actual use of a building, not merely preparation for construction or even initiation of actual construction, is a prerequisite to an exemption from taxation under MCL § 211.7s By the statute’s own terms, a prerequisite to an exemption is that the house of public worship be ‘used predominantly for religious services or for teaching the religious truths and beliefs of the society.’”¹² Consequently, the fact that future religious use was contemplated for the subject property in the tax year at issue, as testified by the Imam, is irrelevant. Petitioner’s reliance on *Christian Reformed Church in North America v Grand Rapids*¹³ is also misplaced, as while the petitioner in that case was a nonprofit religious institution, *CRC* was decided under MCL 211.7d, a precursor to the current educational and charitable institution exemption statutes, which at that time provided exemption for “[r]eal estate or personal property . . . owned and occupied by nonprofit theater, library, benevolent,

⁵ *St Paul Lutheran Church v Riverview*, 165 Mich App 155, 161; 418 NW2d 412 (1987).

⁶ MCL 211.1.

⁷ *Huron Residential Services for Youth, Inc v Pittsfield Charter Twp*, 152 Mich App 54, 58; 393 NW2d 568 (1986).

⁸ *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).

⁹ See Article 9, Section 4 of the Michigan Constitution; MCL 211.7o; and MCL 211.7s.

¹⁰ *Id.*

¹¹ See *St Paul Lutheran Church v Riverview*, 165 Mich App 155, 161; 418 NW2d 412 (1987).

¹² *Id.* (emphasis omitted).

¹³ *Christian Reformed Church in North America v Grand Rapids*, 104 Mich App 10; 303 NW2d 913 (1981).

charitable, educational, or scientific institutions . . . while occupied by them solely for the purposes for which the institutions were incorporated . . .”¹⁴ The primary issue was whether the petitioner was a “charitable” or “benevolent” institution within the meaning of the statute, and the holding cited and relied upon by Counsel related to the secondary issue of whether the petitioner occupied the property solely for the purpose for which it was incorporated.¹⁵ This issue is not relevant to a determination under MCL 211.7s, as the same does not mandate occupancy as other exemption statutes do, but instead requires that the property be used predominantly for religious services or for teaching religious truths and beliefs. Further, though it was used primarily for administrative purposes, the record in that case established that the subject building was also regularly used for worship services, training assemblies, and other religious-oriented instruction:

[M]embers of the administrative and support staffs, . . . visitors to staff, and groups or individuals who come into the facility for religious services, training assemblies or other religious-oriented instruction are . . . routinely involved in worship services as a prelude to their other denominational activities. Included on staff are 18 ministers, any of whom may conduct the various services . . . [T]he various worship services are open to the general public as are the religious-oriented meetings which bring people from many places for training education, including recruits for the Church's mission programs, who undergo orientation on the premises; and for assisting persons in carrying on Church-sponsored evangelism, teaching and benevolence missions, even in the participants' local communities. As gatherings are held at the building it is ‘with prayer, with scripture reading and for inspiration and assistance in doing the work of Christ,’ as the witness testified. Some agencies housed in subject building hold a period of worship and prayer on a daily and/or weekly basis. A time of worship for the entire staff is set aside monthly and also for frequent special occasions.¹⁶

In contrast, the record in the instant appeal does not support a conclusion that any religious services were held at the subject property during the tax year at issue. Thus, the sole basis under which the property could qualify for an exemption would be a predominant use for teaching religious truths and beliefs.

¹⁴ As amended, MCL 211.7n currently exempts “[r]eal estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions . . . while occupied by them solely for the purposes for which the institutions were incorporated . . .” MCL 211.7o similarly exempts “[r]eal or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated . . .” *Id.*

¹⁵ “We have set forth evidence that the property falls under MCL 211.7s. Especially houses of public worship include buildings or other facilities owned by a religious organization and used predominantly for religious services or for teaching the religious precepts and the belief of the society. I would also cite *Christian Reformed Church, North America—In North America versus the City of Grand Rapids*, it’s a 1981 case, 303 NW2d, page 913, 104 Mich App, page 16. Non-church activities—in this case it states non-church activities by a building used predominantly for administration of church business was exempt from property taxation. And in this case, part of the building was used, admittedly, for church business. The other part was preparing the rest of the building for church business. The parking lot on which this building—the subject property includes a parking lot, which is used for church business. Nothing else but church business.” Transcript, p. 121.

¹⁶ *Christian Reformed Church*, 104 Mich App at 14.

Imam Elturk testified that when Petitioner filed its application for exemption on November 13, 2013, it had a certificate of occupancy for 3,300 SF of the subject's larger building, and that portion of the property was being used for adult religious education classes. The Tribunal finds this testimony credible and sufficient to support a partial exemption for the 2014 tax year. The Tribunal also finds that the entire 3,300 SF testified to by Imam Elturk is entitled to exemption, notwithstanding Mr. Agrusa's testimony that he believed that portion of the property comprised only 1,500 SF, given his later acknowledgement that he never entered the property or measured the space prior to December 2014, and had only a partial view of that unit. The subject parking lot is also entitled to exemption pursuant to the Court of Appeals' holding in *Institute in Basic Life Principles v Watersmeet Twp.*¹⁷ In evaluating the sufficiency of the property owner's use of the property, the Court held that the relevant inquiry is "whether the entire property was used in a manner consistent with the purposes of the owning institution."¹⁸ After a thorough analysis and review of prior case law, the Court concluded:

Although the cases rejecting the quantum of use test involve educational institutions rather than houses of public worship, their reasoning applies here. We decline to invite the Tax Tribunal to apply the rigorous quantum of use test, finding that the test would unnecessarily intrude into the affairs of religious organizations. Rather, we adopt the criteria employed in *Nat'l Music Camp* and *McCormick Foundation* and ask whether the entire property was used in a manner consistent with the purposes of the owning institution. This test avoids undue entanglement in the province of religious entities, and more closely conforms with the requirement under the exemption statute that the property be used predominantly for teaching the religious truths of the society.¹⁹

At issue in that case, and in all of the cases from which the underlying reasoning was adopted, were parcels with substantial acreage, most of which were undeveloped, and only some of which were physically occupied or used. The Court noted the Institute's use of the lodge and conference center for religious seminars and worship services and made a specific finding that the property was used for religious purposes within the meaning of the statute.²⁰ The question presented was whether, in light of that finding, the exemption should extend to the entire property, including the undeveloped portions where no such activities took place.²¹

The subject property is adjacent to the existing house of worship, and Imam Elturk testified that one of the primary reasons for purchasing it was to provide additional parking for Petitioner's

¹⁷ *Inst. in Basic Life Principles, Inc v Watersmeet Twp*, 217 Mich App 7; 551 NW2d 199 (1996).

¹⁸ *Id.* at 19.

¹⁹ *Id.* The validity of *Nat'l Music Camp v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977), and *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981), was called into doubt by the Michigan Supreme Court in *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 54; 746 NW2d 282 (2008). The Court in that case addressed the issue of what constitutes occupancy under MCL 211.7o. *Institute in Basic Life Principles* was not called into doubt, however, and unlike MCL 211.7s, which requires that property be owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the society, MCL 211.7o requires that the property be owned and occupied by the exemption claimant solely for the purposes for which the claimant was incorporated.

²⁰ *Id.* at 17.

²¹ *Id.* at 19.

congregants. Indeed, Petitioner's congregants were using the lot with the owner's permission even prior to its acquisition of the subject property. Because this portion of the property was used in a manner consistent with the purposes of the owning institution during the 2014 tax year, it is entitled to exemption under MCL 211.7s. As to the amount of the exemption, Respondent's record card indicates that the subject parking lot, which has a true cash value of \$29,172, comprises 66% of the total land area. Thus, the property's taxable value should be reduced by \$103,289 to reflect this portion of the exemption.²² The learning center comprises 25% of the larger building, which results in a taxable value reduction of \$42,105.²³ With a total reduction of \$145,394, the property has a taxable value of \$221,686 for the 2014 tax year.²⁴

JUDGMENT

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.²⁵ 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%, and (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%.

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.

²² $\$88,703 (\$268,798 \times .66 = \$177,406 \div 2) + \$14,586 (\$29,172 \div 2) = \$103,289.$

²³ $\$336,842 \times .25 = \$84,210 \div 2 = \$42,105.$

²⁴ $\$367,080 - \$145,394 = \$221,686.$

²⁵ See MCL 205.755.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.²⁶ 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.²⁷ 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.²⁸ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.²⁹

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."³⁰ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.³¹ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.³²

By: Steven H. Lasher

Date Entered by Tribunal: March 16, 2016
ejg

²⁶ See TTR 261 and 257.

²⁷ See TTR 217 and 267.

²⁸ See TTR 261 and 225.

²⁹ See TTR 261 and 257.

³⁰ See MCL 205.753 and MCR 7.204.

³¹ See TTR 213.

³² See TTR 217 and 267.