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

SBC Health Midwest Inc.,
Petitioner,

v

MTT Docket No. 416230

City of Kentwood,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT UNDER MCR 2.116(I)(2)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On August 14, 2013, Petitioner filed a Motion for Summary Disposition stating that it is entitled to a property tax exemption for its tangible personal property under MCL 211.9(1)(a), as personal property of an educational institution.

On August 28, 2013, Respondent filed its response to Petitioner's Motion for Summary Disposition, stating that Petitioner is not entitled to an exemption under MCL 211.9(1)(a) and that Petitioner's interpretation of this statute is in conflict with 211.7n, which Respondent interprets to provide an exemption for real or personal property owned by a *nonprofit* educational institution.

Oral Argument on Petitioner's Motion for Summary Disposition was heard on September 16, 2013. Petitioner was represented by James H. Kane. Respondent was represented by Crystal L. Morgan. Upon review of the Motion,

the response, the evidence, and the statements made during Oral Argument, the Tribunal finds that Petitioner's Motion for Summary Disposition should be denied and further finds that summary disposition should be granted in favor of Respondent under MCR 2.116(I)(2).[1]

PETITIONER'S CONTENTIONS

Petitioner contends that it has established that it is an educational institution and, as a result, is entitled to an exemption under MCL 211.9(1)(a). In support of its contention that it is an education institution, Petitioner states: (i) if it were not in existence, the students would most likely attend a state-supported college or university, (ii) Petitioner has similar requirements for admission to various community colleges in the surrounding area, (iii) Petitioner has similar student qualifications for professional behavior and graduation, (iv) Petitioner has similar major fields of study as state-supported schools, with Jackson Community College and Kirkland Community College offering nearly identical degrees, (v) Petitioner has similar time requirements for completion of the prescribed course of study, and (vi) Petitioner has comparative quantity and quality of courses to the same programs offered at state-supported schools, with the placement ratio being 16 to 25.

Petitioner further contends that a for-profit institution can qualify as an educational institution for purposes of the exemption under MCL 211.9(1)(a). Petitioner contends that the Legislature did not limit the exemption to non-profit institutions, and under the longstanding rules of statutory construction, it must be assumed the Legislature meant what it wrote. It is Petitioner's argument that the

[1] "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." MCR 2.116(I)(2).

word "nonprofit" in MCL 211.7n only modifies theater, it does not modify educational institution, and as such, Petitioner is not required to be a nonprofit institution for purposes of receiving an exemption.

Petitioner further argues that under *Webb Academy v Grand Rapids*, 209 Mich 523; 177 NW 290 (1920), even though the school was for-profit, it was still entitled to the exemption because it was a general educational institution. Petitioner states that the Michigan Supreme Court in *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 737 (1948), cited *Webb* and affirmed that even though the school was for-profit, it was entitled to an exemption because it was a general education institution.

RESPONDENT'S CONTENTIONS

Respondent argues that personal property of a for-profit educational institution is not exempt under MCL 211.9(1)(a). Respondent contends that Petitioner's claim ignores the remainder of the statutory scheme regarding exemptions for educational institutions, most notably MCL 211.7n, which Respondent argues shares a common purpose and must be read together with MCL 211.9(1)(a). It is Respondent's contention that the use of the word "nonprofit" in MCL 211.7n modifies all of the types of institutions that follow in the sentence, not just the word theater. Respondent further argues that an interpretation that reads both MCL 211.9(1)(a) and 211.7n together and permits an exemption only for nonprofit educational institutions is consistent with Article 9, Section 4 of the Michigan Constitution, which states that "[p]roperty owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes." Alternatively, Respondent contends that if the two statutes are not

read together but are instead conflicting, the more specific statute that was enacted subsequent to the more general statute will prevail (with MCL 211.7n being the more specific and more recent). Respondent further states that for-profit charter schools were just recently granted an exemption by the Legislature, and this exemption would have been unnecessary had the charter schools been determined to be exempt from taxation based only on the fact that they are educational institutions.

Respondent does not agree that *Webb* would be applied to grant Petitioner the exemption, as that case was decided decades before the Michigan Constitution was adopted, 60 years before the enactment of MCL 211.7n, and the school at issue in *Webb* was a general educational institution and not a business college or specialized school.

Lastly, Respondent argues that even if it is determined that the exemption can be applied to a for-profit institution, Petitioner does not meet the test set forth in *David Walcott Kendall Mem School v Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968). Respondent states: (i) there is no evidence to support that if Petitioner did not exist the burden on state-supported schools would not be appreciably increased and 16 out of 25 students at Petitioner's location obtain positions in their field after graduation, (ii) Petitioner has not presented evidence that its students are qualified and willing to attend a state college or university, (iii) at least one of the schools (Jackson Community College) Petitioner compares itself to has indicated that it does not accept transfer credits from Petitioner, which also calls into doubt the allegation that Petitioner offers nearly identical degrees to these schools, (iv) the articulation agreements Petitioner claims to exist are with two subsidiaries of CEC, Petitioner's parent company, and should be given no weight,

and (v) there is nothing in the record that would indicate that the state grants any funding or provides any funding for this school.

STATEMENT OF FACTS[2]

1. The subject property, parcel number 41-50-65-026-924, is classified as commercial personal property, and is located at 4020 Sparks Drive SE, Grand Rapids, Michigan.
2. The subject personal property is owned by Petitioner, SBC Health Midwest Inc.
3. Petitioner is a subsidiary of Career Education Corporation ("CEC"), a Delaware for-profit corporation.
4. For the tax years at issue, Petitioner maintained operations at Sanford-Brown College, a private, for-profit postsecondary school.
5. Petitioner has articulation agreements with Colorado Technical University and Briarcliffe- College, both subsidiaries of CEC.
6. Petitioner's mission statement is:

> To support the needs of a diverse student population by providing quality, flexible and career-focused education that specializes in technical and non-technical fields of study with a focus on allied healthcare professions. Sanford-Brown prepares students for entry level employment through a supportive and student-oriented environment while serving the needs of our community.

[2] The "facts" presented in this Order are based on the Stipulation of Facts filed by the parties on August 28, 2013, and are stated solely for purposes of deciding the motion and are not findings of fact for this case. See MCL 205.751; MCL 24.285; *Jackhill Oil Co v Powell Production, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995) (stating that a court may not make findings of fact when deciding a summary disposition motion).

7. Petitioner is approved by the U.S. Department of Education to participate in Title IV financial aid programs.
8. Admission into SBC is contingent upon completion of an application for admission, payment of an application fee, satisfaction of entrance exam requirements, satisfactory personal interview, a high school diploma or other acceptable proof of graduation from a valid institution, or the equivalent of such graduation, and other application requirements set forth in the SBC catalog.
9. 16 of 25 students obtain positions in their field of study after graduation.
10. The taxable values on the roll for the tax years at issue are as follows:

Year	Taxable Value
2011	$323,700
2012	$308,600
2013	$246,200

APPLICABLE LAW

Petitioner did not cite which standard is to be applied in deciding its Motion for Summary Disposition. Upon review of the Motion, the Tribunal finds that Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated "[a] motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact." Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. See *Smith v Globe*

Life Insurance, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the nonmoving party. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. 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. See *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

CONCLUSIONS OF LAW

The Tribunal must determine whether there is a genuine issue of material fact regarding whether Petitioner's personal property is exempt from taxation. Petitioner claims it should be exempt under MCL 211.9(1)(a), which provides an exemption for:

> The personal property of charitable, educational, and scientific institutions incorporated under the laws of this state. This exemption does not apply to secret or fraternal societies, but the personal property of all charitable homes of secret or fraternal societies and nonprofit corporations that own and operate facilities for the aged and chronically ill in which the net income from the operation of the nonprofit corporations or secret or fraternal societies does not inure to the benefit of a person other than the residents is exempt.

The key issue that must be decided in this appeal is whether MCL 211.9(1)(a) can be applied, standing alone, to provide an exemption for personal property of an educational institution or if it must be read in conjunction with MCL 211.7n, which states:

> Real estate or personal property owned and occupied by **nonprofit** theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act. In addition, real estate or personal property owned and occupied by a nonprofit organization organized under the laws of this state devoted exclusively to fostering the development of literature, music, painting, or sculpture which substantially enhances the cultural environment of a community as a whole, is available to the general public on a regular basis, and is occupied by it solely for the purposes for which the organization was incorporated is exempt from taxation under this act. [Emphasis added.]

Both MCL 211.9(1)(a) and 211.7n relate to an exemption for personal property of an educational institution. The distinction is that MCL 211.7n contains the term "nonprofit" while MCL 211.9(1)(a) does not. It is Respondent's argument that the statutes share a common purpose and must be read together as in

pari materia. This argument is supported by Michigan case law. Specifically, the Supreme Court has held:

> Statutes in pari materia are those which relate to the same person or thing, or to the same class of persons or things, or which have a common purpose; and although an act may incidentally refer to the same subject as another act, it is not in pari materia if its scope and aim are distinct and unconnected. It is a well established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although they were enacted at different times, and contain no reference to one another. *Palmer v State Land Office Bd*, 304 Mich 628, 636-637; 8 NW2d 664 (1943).

The Supreme Court has also held that "[i]t is elementary that statutes in *pari materia* are to be taken together in ascertaining the intention of the legislature, and that courts will regard all statutes upon the same general subject-matter as part of one system." *Dearborn Twp Clerk v Jones*, 335 Mich 658, 662; 57 NW2d 40 (1953).[3] MCL 211.9(1)(a) and 211.7n both relate to the same general subject matter and have the same general purpose - the exemption for personal property of educational institutions. As such, the statutes are in *pari materia* and must be read together to ascertain the legislative intent with respect to the exemption. In determining which statute should be controlling, the Court of Appeals has held:

> Where two statutes are in pari materia and one is specific to the subject matter while the other is only generally applicable, the specific statute, which is treated as an exception to the general one, prevails. This rule is particularly persuasive when one statute is both more specific and more recent. *Hill v Dep't of Treasury*, 202 Mich App

[3] See also *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127; 662 NW2d 758 (2003), *People v Harper*, 479 Mich 599; 739 NW2d 523 (2007), and *People v Kern*, 288 Mich App 513; 794 NW2d 362 (2010).

> 700, 704; 509 NW2d 905 (1993). [(Internal citations omitted.] See also *Parise v Detroit Entertainment, LLC*, 295 Mich App 25; 811 NW2d 98 (2011).

The Court of Appeals has further stated that "[i]f the two statutes appear to conflict, however, a newer statute prevails over the older. This is because the Legislature is presumed to be aware of, and thus to have considered the effect on, all existing statutes when enacting new laws." *People v Bragg*, 296 Mich App 433, 451; 824 NW2d 170 (2012). This is true even if the statutes contain no reference to one another. See *Maple Grove Twp v Misteguay Creek Intercounty Drain Bd*, 298 Mich App 200; 828 NW2d 459 (2012). MCL 211.9(1)(a) was first enacted in 1893, while MCL 211.7n was enacted in 1980. MCL 211.7n is therefore the more recent and more specific of the two. Under Michigan case law, MCL 211.7n would prevail over MCL 211.9(1)(a) in determining whether Petitioner's personal property could be exempt from taxation.

Having determined that the language of MCL 211.7n is controlling as the more recent and more specific statute, the Tribunal must next determine what effect the term "nonprofit" is to be given within the context of the statute. Petitioner argues that nonprofit only modifies the term theater and that Petitioner could still be exempt as an educational institution. Respondent, on the other hand, asserts that nonprofit modifies all terms following it, requiring Petitioner to be a nonprofit educational institution in order to qualify for the exemption. In reading MCL 211.7n in its entirety, the second sentence also includes the term nonprofit and states "real estate or personal property owned and occupied by a nonprofit organization organized under the laws of this state devoted exclusively to fostering the development of literature, music, painting, or sculpture . . . ." When MCL

211.7n is read in its entirety, it is clear that it was meant to apply to various types of *nonprofit* organizations and institutions. The first sentence in the statute cannot logically be read to apply the term nonprofit only to theaters, but not to libraries and educational or scientific institutions, with the second sentence than applying to nonprofit organizations again. The finding that the exemption is meant to apply to nonprofit educational institutions is further supported by Article 9, Section 4 of the Michigan Constitution, which states "[p]roperty owned and occupied by **non-profit** religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes." [Emphasis added.] As stated by the Court of Appeals in *People v Meconi*, 277 Mich App 651, 658-659; 746 NW2d 881 (2008), "it is a fundamental axiom of American law, rooted in our history as a people and requiring no citations to authority, that the requirements of the Constitution prevail over a statute in the event of a conflict." [Internal citation omitted.] The language in Article 9, Section 4 of the Constitution specifically provides an exemption from taxation for personal property only for nonprofit educational organizations. If MCL 211.7n is read to require that all the enumerated organizations are nonprofit, it is then in conformity with the provisions of the Constitution that also relate to the same exemption.

Given the above, the Tribunal finds that Petitioner's personal property is not entitled to an exemption under MCL 211.9(1)(a) and 211.7n, as Petitioner is not a *nonprofit* educational institution, as required by the controlling statute and the Michigan Constitution. The Tribunal does not find it necessary to consider the remaining arguments relating to whether Petitioner is an "educational" institution, as Petitioner's status as a for-profit entity would prohibit it from receiving the exemption regardless of whether it met the test for an educational institution. As

such, the Tribunal finds that there is no genuine issue of material fact with respect to the requirement that Petitioner must be a nonprofit educational institution in order to qualify for an exemption. As Petitioner is not a nonprofit educational institution, summary disposition in favor of Respondent is appropriate under MCR 2.116(I)(2). Therefore,

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

IT IS FURTHER ORDERED that Summary Disposition is GRANTED in favor of Respondent under MCR 2.116(I)(2).

This Final Opinion and Judgment resolves any pending claims in this matter and closes this case.

By: Steven H. Lasher

Entered: October 8, 2013