STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

Mooney Real Estate Holdings, Petitioner,	MICHIGAN TAX TRIBUNAL
v	MOAHR Docket No. 19-001449
City of Southfield, Respondent.	Presiding Judge Steven M. Bieda

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment (POJ) on March 15, 2021. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

On April 2, 2021, Petitioner filed exceptions to the POJ. In the exceptions, Petitioner states that it takes exception to the Tribunal's determination that it is not a religious society entitled to exemption under MCL 211.7s or a charitable organization entitled to exemption under MCL 211.7o. In support of its exceptions, Petitioner relies on the reasons set forth in its summary disposition filings. Petitioner alleges it provided significant evidence that it qualifies for an exemption under these statutes.

On April 16, 2021, Respondent filed a response to Petitioner's exceptions. In the response, Respondent states that Petitioner provided no evidence, argument, or reasoning for why the POJ erred in its conclusion that Petitioner did not qualify for an exemption under MCL 211.7s or MCL 211.7o; Petitioner relies solely on the arguments set forth in its summary disposition filings, which were correctly rejected as not being supported by law or the facts of the case.

On April 2, 2021, Respondent filed exceptions to the POJ. In the exceptions, Respondent states that it takes exception to the Tribunal's determination that "there is no practical distinction between Petitioner as the owner of the property and the Archdiocese as the occupant of the property," such that the property is exempt under MCL 211.7o. This conclusion makes inferences without support in the record, fails to address other relevant facts, and incorrectly applies case law to reach a conclusion that

radically expands MCL 211.7o(1) beyond the plain language of the statute and without any precedent to support the finding.

On April 16, 2021, Petitioner filed a response to Respondent's exceptions. In the response, Petitioner states that the Tribunal correctly determined that the subject property is exempt under MCL 211.7o. Petitioner doesn't agree with all of the Tribunal's reasoning but the POJ reaches the only result that is consistent with MCL 211.7s, MCL 211.7o, and the Michigan Constitution—that an operating Catholic church is exempt from ad valorem property taxes.

The Tribunal has considered the exceptions, responses, and the case file and finds that the Administrative Law Judge (ALJ) properly considered the testimony and evidence provided. With respect to Petitioner's exceptions, Respondent correctly notes that Petitioner is relying on arguments and evidence previously presented, all of which were considered and rejected in the POJ. As such, Petitioner has failed to show good cause to justify modifying the POJ or granting of a rehearing.

As for Respondent's exceptions, the Tribunal disagrees that the ALJ's determination is not supported by the cases cited in the POJ. Respondent contends that *City of Ann Arbor v Univ Cellar* [1] is facially different from the instant appeal, and that it is based on an assumption not present in the language of MCL 211.7o. Although Respondent is correct regarding the differences in statutory language and requirements, its argument ignores the fact that ownership by a qualifying organization was an *explicit* requirement for exemption under the statute in *University Cellar*, and the Michigan Supreme Court nonetheless considered that the property of one entity could, in substance, be the property of another.[2] Further, there is no dispute that the Archdiocese in this case is a charitable institution within the meaning of MCL 211.7o, or that it occupies the subject property for the charitable purpose for which it is incorporated. As such, the only issue is in essence whether the Archdiocese can be said to be the substantive owner of the property by virtue of its managerial and operational control of Petitioner.

Respondent also contends that *Nat'l Music Camp v Green Lake Twp* [3] is not analogous or reliable because all of the individual entities in that case were exempt institutions. Again, Respondent is correct that there are factual distinctions between *Nat'l Music Camp* and the instant appeal, but these distinctions were acknowledged in the POJ. Moreover, the noted distinctions do not negate the ALJ's reliance on the cited language, namely that "the substance of an arrangement rather than its form should be the guiding principle in determining ownership and tax exemption status."[4] The Court of Appeals cited both *University Cellar* and *United Artists Corp v Dept of Treasury*;[5] in support of this holding, and it has more recently noted that "our Supreme Court has repeatedly

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[1] *City of Ann Arbor v Univ Cellar, Inc*, 401 Mich 279; 258 NW2d 1 (1977).
[2] The statute at issue in *University Cella*r was MCL 211.9(1)(a), which exempts "the personal property of charitable, educational, and scientific institutions incorporated under the laws of this state." *Id.*
[3] *Nat'l Music Camp v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977).
[4] *Id.* at 614.
[5] *United Artists Corp v Dept of Treasury*, 66 Mich App 289; 238 NW2d 841 (1975).

held that under some circumstances, the technically legal owner of property and the functionally effective owner of property can be deemed the same for tax exemption purposes even if they are otherwise distinct entities."[6] It further noted that "these holdings are consistent with the longstanding legal principle that Michigan jurisprudence generally avoids elevating formalities over substance."[7] The Court also observed that although the Supreme Court did not explicitly decide the issue in *University Cellar*, its holding in *Eng'g Soc of Detroit v City of Detroit*[8] strongly suggested that "a tax-exempt entity could 'pass through' that status to another entity,"[9] and it subsequently expressed its acceptance of such a finding: "We accept that any tax-exempt status of an entity that practically owns and occupies property *can* pass through to the legal owner . . . . "[10]

The ALJ found that Petitioner, a nonprofit entity with no employees and no outside contracts, operates for the sole benefit of the Archdiocese, and that the Archdiocese retained managerial and operational control over Petitioner through three volunteer officers and a board of seven volunteer directors selected by the Archdiocese. Consequently, the Tribunal cannot conclude that the ALJ erred in determining that there was no practical distinction between Petitioner as the owner of the property and the Archdiocese as the occupant of the property. The "distinctions" noted in Respondent's exceptions are of no relevance to this determination, and its contention that the POJ is carving out a new and entirely undefined exemption category is without merit for all of the foregoing reasons.

Given the above, the Tribunal finds no good cause to justify the modifying of the POJ or the granting of a rehearing.[11] As such, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[12] The Tribunal also incorporates by reference the Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

Parcel No. 76-24-10-351-023 shall be granted an exemption, under MCL 211.7o, for the 2019 tax year; the amount of the exemption is 100%.

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

Parcel Number: 76-24-10-351-023

Year	TV
2019	$1,030,530

[6] *Bldg Corp of Detroit Elec Indus Apprentice & Journeyman Training Fund v City of Warren*, unpublished per curiam opinion of the Court of Appeals, issued July 24, 2018 (Docket No. 339292) (citations omitted).
[7] *Id*. (citations omitted).
[8] *Eng'g Soc of Detroit v City of Detroit*, 308 Mich 539; 14 NW2d 79 (1944).
[9] *Bldg Corp of Detroit*, unpub op at 4.
[10] *Id*.
[11] See MCL 205.762.
[12] See MCL 205.726.

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

Parcel Number: 76-24-10-351-023

Year	TV
2019	$0

IT IS SO ORDERED.

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

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition 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.[13] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (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%, (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%, and (xiv) after December 31, 2020, through June 30, 2021, at the rate of 4.25%.

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[13] See MCL 205.755.

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

APPEAL RIGHTS

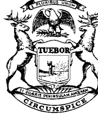
If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

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. 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. 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. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

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 decision, it is an "appeal by leave." 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. The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By ______________________________

Entered: June 3, 2021
ejg



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Mooney Real Estate Holdings,
Petitioner,

v

City of Southfield,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 19-001449

Presiding Judge
Peter M. Kopke

PROPOSED ORDER GRANTING
PETITIONER'S MOTION FOR SUMMARY DISPOSITION

PROPOSED ORDER DENYING
RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

As a result of a Prehearing Conference, the Tribunal issued a Scheduling Order on July 15, 2020, providing for dates for the filing of Cross-Motions for Summary Disposition and Responses to those Motions and, in compliance with that Order, the parties filed Cross-Motions on August 21, 2020, and Responses on September 18, 2020.

The Tribunal has reviewed the Motions, the Responses, and the case file and finds that the granting of Petitioner's Motion for Summary Disposition and the denying of Respondent's Motion for Summary Disposition are warranted **even though** Petitioner is **neither** a religious society **nor** a nonprofit charitable institution.

PETITIONER'S CONTENTIONS

In its Motion, Petitioner claims that it is entitled to summary disposition in its favor under MCR 2.116(C)(10). Petitioner also contends that:[1]

[1] The parties' references to exhibits or other documents in support of their separate contentions or claims are not included in the Tribunal's recitation of those claims. Said exhibits and documents were, however, considered in the rendering of this POJ.

1. In 2018, as the first step of a process to carry out a directive from Rome, the Archbishop of the Roman Catholic Archdiocese of Detroit conveyed the subject property, as well as hundreds of others, to Mooney Real Estate Holdings, a nonprofit corporation and integrated auxiliary of the Archdiocese. The ultimate goal of this process is for parishes to hold title to their own properties. Previously, all Archdiocesan property in the State of Michigan was titled in the name of the archbishop, bishop, or cardinal who served at the time when the property was first acquired. The goal of parish ownership was realized for the subject property in 2019, when our Lady of Albanians was incorporated, and Mooney conveyed the property to the parish.[2]
2. Mooney, like the Archdiocese, is both a religious society and a charitable institution, and is therefore eligible for exemption under MCL 211.7s and 7o. Mooney was organized solely for religious and charitable purposes, in particular, to spread Catholic religious truths and beliefs by making its properties available, free of charge, to the Archdiocese and its parishes. The religious and charitable services offered through the Our Lady of Albanians property have not been diminished as a result of Mooney's ownership. The Tribunal should hold that the subject property is exempt under MCL 211.7s and 7o, and more broadly, that Mooney is entitled to claim exemption under those sections for properties that otherwise qualify based on their use.
3. For tax year 2019, Mooney owned the property that is the subject of this appeal. Mooney is a Michigan non-property corporation classified by the Internal Revenue Service (IRS) as a public charity under sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (IRC), and an integrated auxiliary of the Archdiocese under federal tax law.
4. Mooney was incorporated in 2018 to facilitate the alignment of parish organizations in the Archdiocese with Canon Law. Church authorities in Rome directed dioceses in the United States to move toward the civil law model of parish incorporation because it most closely aligned with Canon Land and the way that parishes already held Canon Law ownership of their own real property.
5. As an integrated auxiliary of the Archdiocese, Mooney is entitled to exemption from federal income taxation under the same group ruling that applies to all other subordinate organizations of the Roman Catholic Church. The Archdiocese is itself a subordinate under the group tax exemption issued by the IRS to the United States Conference of Catholic Bishops (USCCB) for the Roman Catholic

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[2] Petitioner also claims, in pertinent part:

> The Archbishop conveyed this Property to Mooney on April 2, 2018 by Warrant Deed. The Use Agreement between Mooney and the Archdiocese was executed around that time, and the use of the Property did not change as a result of the conveyance. In fact, Our Lady of Albanians'[] parishioners most likely did not even realize that a change in title ownership had occurred – so little did the conveyance affect daily operations at the parish.
>
> The only change that resulted from the conveyance was Southfield's treatment of the Property's tax -exempt status . . . .

Church in the United States, and in addition to being classified by the IRS as a tax-exempt public charity under Sections 501(c)(3) and 509(a)(1) of the IRD, Mooney is further classified as a church under IRC 170(b)(1)(A)(i). The USCCB confirmed that Mooney qualifies for inclusion under the group tax exemption. Mooney also appears in the Official Catholic Directory, which for over two hundred years has served as an authoritative listing of Catholic institutions and clergy in the United States and around the world.

6. The Archbishop of the Archdiocese of Detroit (the "Archbishop") is Mooney's sole member and Mooney is required to operate in conformity with Canon Law, as descried in Article II(C) of Mooney's Articles of Incorporation ("Articles") . . . . Mooney's operations are guided by three volunteer offices (president, vice president, and treasurer), and seven directors. Two of Mooney's directors are ordained priests. None of Mooney's directors or officers receive any salary or other monetary compensation from Mooney for their service.
7. Mooney's property is made available to interested members of the general public for prayer, education, sacraments, and other spiritual and cultural activities. The vast majority of services offered at Mooney's properties (such as daily religious services and weekly Bible study) are offered free of charge to an indefinite number of people. Mooney's properties are used predominantly to teach Catholic religious truths and beliefs. Likewise, the Archdiocese has as its mission bringing the hearts and minds of people under the influence of the Roman Catholic Church. Its core purpose is "[t]o give glory to God and to help every soul within our reach attain eternal life through Jesus Christ." The Archdiocese serves approximately 1.3 million Catholics throughout Southeast Michigan, supporting 218 parishes, including Our Lady of Albanians.

Petitioner further claims that (i) the subject property consists of a church building used for religious and charitable functions, parsonage, parish social hall, and parking lot and that the uses of those improvements comply with the requirements of the exemptions. Petitioner contends that use of the property is available to the public, on occasion without cost, and without discrimination and (ii) a small portion of the property is leased to AT&T, which operates a cell tower there, the revenue from which is used to support the Archdiocese's operations.

In support of its claims, Petitioner cites cases such as *Institute in Basic Life Principles* and *Dominion Broadcasting*, as well as claiming to be distinguishable from *Self Realization Meditation Healing Centre*.[3] Petitioner also relies upon its Articles of

[3] See *Institute in Basic Life Principles, Inc v Watersmeet Twp*, 217 Mich App 7; 551 NW2d 199 (1996); *Dominion Broadcasting, Inc v Fairfield Twp*, MOAHR Docket No. 268756 (2001).
the unpublished opinion *per curiam* issued by the Michigan Court of Appeals in *Self Realization Meditation Healing Centre v Bath Twp* on June 21, 2011 (Docket No. 297475).

Incorporation to demonstrate that it is organized to teach religious truths and contends that the Tribunal has previously relied upon such articles in granting the exemption. Petitioner further contends the finder of fact must look beyond the text and consider the context of Petitioner's actions, which it analogized to the claimant in *Camp Retreats*.[4] Specifically, Petitioner's sole member is the Archbishop of the Archdiocese of Detroit, the Archbishop is required to carry out Catholic directives, and the subject property's buildings are used in conjunction with such directives. Finally, Petitioner contends that (i) it is a nonprofit charitable institution under MCL 211.7o, (ii) it owned and occupied the property for the tax year at issue solely for the purpose for which it was formed, and (iii) it also meets each of the six factors set forth in *Wexford*.[5] Alternatively, it makes the property available to the Archdiocese, which uses the property solely for the purpose for which it was formed.

RESPONDENT'S RESPONSE TO PETITIONER'S CONTENTIONS

In its Response, Respondent contends that:

1. In its brief to the Tribunal, Mooney correctly identifies that the lead case in the application of MCL 211.7s is *Institute in Basic Life Principles v Watersmeet Twp* but fails spectacularly in both its reading of that and related cases and in the application of the relevant test to the facts of this case. Petitioner makes allegations of fact plainly contradicted by its own documentation, asks the Tribunal to accept a theory repeatedly rejected by Michigan courts, and accuses Respondent of making a red herring argument followed by an actual red herring argument. Mooney's incorrect application of the law to the facts only confirms that it is not entitled to the exemption and Respondent is entitled to judgment in its favor.
2. Mooney requests the Tribunal "look[] beyond what a petitioner 'says' through its stated purpose to what it 'does' through its activities" despite the clear requirement of the Institute test that looks at the purposes set forth in the articles of incorporation. Even if the Tribunal were to do this, the outcome would be the same: Mooney is a holding company that does not have as a purpose, let alone its predominate purpose, the teaching of religious truths and beliefs and does not actually teach any religious truths or beliefs. Mooney is a holding company with no employees – full stop. As such, it is not a religious entity under MCL 211.7s and cannot receive the benefit of that exemption. The Archdiocese clearly is a religious society, but the Archdiocese

[4] See the unpublished opinion *per curiam* issued by the Court of Appeals in *Camp Retreats Foundation v Marathon Twp* issued on May 15, 2012 (Docket No. 304179), *appeal denied* 493 MIch 946; 827 NW2d 722 (2013).
[5] See *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 215-216; 713 NW2d 734 (2006).

does not own the property and that simple fact is dispositive in this case involving a property owned by a holding company that itself could not identify a single instance where Mooney taught religious truths or beliefs. The use of the property by an entity other than the owner is irrelevant to the analysis in this case.

3. The parties are in agreement that in order to satisfy the requirements of MCL 211.7o(1) Mooney must: 1) own and occupy the property; 2) be a charitable institution as defined by *Wexford Medical Ctr v Cadillac*; and 3) occupy the property solely for the purpose for which it was formed. Despite agreeing on the framework of the test, and citing Wexford, Mooney muddles the application of the test to attempt to hide the dispositive facts from the Tribunal. Namely, Mooney addresses ownership and its purported charitable status first as a single factor, then addresses the ownership and purpose second as a single element. When the elements and facts are laid out in order, the flaws in Mooney's arguments will be made apparent.
4. The standard for occupancy under MCL 211.7o(1) is regular physical presence. Mooney had no regular physical presence on the property.[6] As explained in Respondent's Motion for Summary Disposition, the occupancy by a different entity is irrelevant so the occupancy by the Archdiocese and parish is not pertinent to this analysis. Mooney could not meet the occupancy requirement as it had no employees, failed the occupancy requirement, and that fact is dispositive of its claim under MCL 211.7o(1).
5. Making property available to another institution, with no limits on the use of that property by the other institution, is not a charitable purpose and Mooney cites no case that it would be.
6. As to the discrimination factor, Mooney admits that it only "makes its properties available to the Archdiocese, which in turns offers a wide variety of religious charitable activities to an indefinite number of people." This statement misses the mark as the standard is not what is done by the entity the property is used by, but what is done by the owning entity.
7. Mooney gives its properties to the Archdiocese with no restrictions or requirements on their use. The activities at the property have no connection to Mooney.
8. Mooney is not the Archdiocese. The two entities are separated by their individual corporate documentation, a formal Use Agreement, and decades of corporate law respecting the legal distinction of corporate entities. The entities cannot be combined for an analysis under MCL 211.7o(1) and Mooney fails

[6] Respondent also claims, in pertinent part:

> Mooney cannot occupy the property for the purposes for which it was founded as it is a holding company. Holding companies do not occupy property, they own property for use by a different entity.

the Wexford test as it was not organized chiefly or solely for charity, improperly discriminates, and has no legitimate charitable purpose.

9. Mooney admits in its brief that "it was *organized chiefly* to make its hundreds of properties . . . available free of charge to the Archdiocese." A review of its Articles of Incorporation shows that there are no charitable or religious purposes. An entity that exists solely to hold title to, and lease property, for the benefit of another entity cannot logically occupy property as that is not its purpose. In addition to the prohibition in the Articles of Incorporation, Mooney has no employees with which it could maintain a regular physical presence at a property if it wanted to occupy one. Finally, the Use Agreement makes it impossible for Mooney to occupy the property as the exclusive use is conveyed to the Archdiocese.
10. The owner of the property is key, and the transfer of a property between discrete entities can have a litany of consequences. In this case, the consequence is that the subject property is no longer exempt. The Archdiocese transferred the property to an independent holding company that by its own Articles of Incorporation existed solely to hold title to property, formalized the use of the property through a valid legal agreement, and that choice is dispositive in this case. No rational viewer of the facts in this case would conclude that Mooney is a religious entity or a charity – it is a holding company. Holding companies do not receive an exemption under Michigan law and Respondent is entitled to judgment in its favor.

RESPONDENT'S CONTENTIONS

In its Motion, Respondent claims that summary disposition in its favor is appropriate under MCR 2.116(C)(8) and (C)(10). Respondent also contends that:

1. Mooney was incorporated on March 21, 2018, under the Michigan Nonprofit Corporation Act. As stated in its articles of incorporation, the purpose of the entity is to "receive and administer funds and property and to operate exclusively for religious purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, and, in particular, to acquire, own and lease real property for the benefit of the Roman Catholic Archdiocese of Detroit . . . ." More specifically, "[t]he corporation is organized and shall be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes" of the Archdiocese. In carrying out this purpose, Mooney "shall operate in strict conformity with, and subject to, the teachings of the Roman Catholic Church, the 1983 Code of Canon Law, as it may be amended from time to time." The sole member of the entity is "ex officio, the Archbishop of the Roman Catholic Archdiocese of Detroit." In addition to the sole member, Mooney had three volunteer officers and seven volunteer directors. Mooney had no employees and engaged no independent contractors. This is true despite owning hundreds of properties across southeast Michigan. During the 2018 calendar year Mooney's lack of employees or independent contractors

was such that "the Archdiocese used certain of its employees and contractors and engaged outside legal counsel to perform the work necessary for the Archdiocese to transfer its real property to Mooney," a task that "Mooney reimbursed the Archdiocese for." Mooney's member and officers are provided with a liability shield "to the fullest extent permitted by the laws of the State of Michigan" for "any actions taken, or any failure to take any action." Mooney maintains its own financial accounting independent from that of the Archdiocese. The articles of incorporation, pursuant to MCL 450.2209 and 450.2488, reserved to the Member/Archbishop, in his capacity as Archbishop "and not as a member of the corporation" the power to: allow for the amendment of the bylaws; the merger, dissolution, or conversion of the entity; "any sale, lease exchange or other disposition of all, or substantially all, of the property and assets of the corporation;" to remove directors; and veto any board resolution. When using these powers, however, the member is treated as a director and provided the same liability protections conveyed to other directors.

2. In discovery answers, Mooney identified its purpose as including "the teaching and spreading of the religious truths and beliefs of the Roman Catholic Church" but was unable to identify a single religious event Mooney itself held. Instead, it answered that it "makes available" the property and "[o]pened the property" to specific parishes such that "Mooney 'held' an innumerable number of religious services and events at its properties."
3. The Archdiocese is allowed use of the property via a document identified as a "use agreement" made between "Mooney Real Estate Holdings . . . ("Owner") and Allen H. Vigneron, Roman Catholic Archbishop of the Archdiocese of Detroit ("User"). The term of the agreement is "year-to-year" and can be canceled unilaterally by either party on thirty days written notice. The Agreement grants to User "for the use and benefit of the" Archdiocese "the exclusive right to the use, occupancy, possession and enjoyment of" any real and personal property owned by Mooney. Other than a right to inspect the property to "protect Owner's interest in the Property" Mooney had no right to either use or occupy the property. Under the Agreement, User is responsible for all taxes, utilities, services, maintenance, and repairs at the subject property. User is also required to maintain multiple types of insurance on the property and compensate user for any attorney fees in the event Owner brings an action against User. The Agreement also requires User to "indemnify defend and hold Owner free and harmless from any and all claims, liability, loss and responsibility of any kind or character" relating to the use of the property. Finally, in the event of a default of the Agreement, Owner can terminate the agreement, and seek damages from User. The Agreement was signed by Mooney's President and separately by the Archbishop on behalf of the Archdiocese, not as the sole member of Mooney.
4. Subject to this agreement, Our Lady of Albanians was allowed use of the property by the Archbishop during the time period relevant to this case and paid all utilities for the property during the 2018 year. Mooney could not recall

a time when an officer or other representative of Mooney, including the Archbishop himself, visited the property during the 2018 calendar year.

5. MCL 211.7o(1) and (3) will be addressed in turn and the facts will clearly show that the purposeful division between the entity that owns the property and the entity that uses the property, formalized through written agreement, as well as the structure and purpose of the ownership entity, make it such that Petitioner cannot satisfy the criteria of any exemption statute at issue in this case. It will also be made clear that, as a holding company with no active teaching, Mooney is not a religious society such that the subject property can receive an exemption under MCL 211.7s. The choice to vest the ownership in one entity, provide use of the property to an individual acting in a formal capacity via legal document, and then have that individual determine the use, if any, of the property results in a structure that rejects any ad valorem exemption claim.
6. When the facts of this case are compared to MCL 211.7o(1) and the law interpreting that statute, it is clear that Mooney, as its own independent legal entity, is not entitled to an exemption in this case pursuant to MCL 211.7o(1). Mooney owns, but does not occupy the property. Mooney is not a charitable institution under Wexford. Finally, even if it met those standards, Mooney could not occupy the subject property solely for the purposes for which it was incorporated as it was incorporated as a holding company to hold title and pass use of property to an individual, the Archbishop, who then determines the use of the property whether it be vacant or for religious purposes. Attempting to fit Mooney into MCL 211.7o(1) is the proverbial square peg into a round hole. The legal and factual contortions necessary to secure even the most passing satisfaction of the various elements proves the lack of qualification. That exemption statutes are to be strictly construed in favor of the taxing authority further cements that the correct decision in this case is to deny the exemption request.[7]

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[7] Respondent cites *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 57-58; 746 NW2d 282 (2008), which provides, in pertinent part:

> Because the statute uses the conjunctive term "owned *and* occupied," however, the Legislature must have intended different meanings for the words "owned" and "occupied." Otherwise, the word "occupied" would be mere surplusage. "Courts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory." *Koontz v Ameritech Services, Inc,* 466 Mich 304, 312; 645 NW2d 34 (2002). Thus, the Legislature must have intended the term "occupy" to mean the other aspect of the dictionary definition: to "reside in or on" or "to be a resident or tenant of; dwell in." This aspect of the definition especially makes sense when viewed in its specific context; it is "real or personal property" that must be "occupied." "Reside" means "1. to dwell permanently or for a considerable time; live. 2. (of things, qualities, etc.) to be present habitually; be inherent ([usually followed] by *in*)." *Webster's Universal College Dictionary* (1997). Thus, aided by this dictionary definition, we conclude that to occupy property under MCL 211.7o(1), **the charitable institution must at a minimum have a regular physical presence on the property**. [Emphasis added.]

7. The purpose of MCL 211.7o(3) is to prevent a technical exemption denial involving entities that would otherwise qualify but for ownership vested in one entity and occupancy vested in the other. That is not situation in this case as Mooney facially would **not** qualify if ownership and occupancy were unified and the Archdiocese clearly would. This case involves one plainly exempt entity and one that is plainly not. The purposeful choice to transfer the property from the Archdiocese to Mooney and set the latter up in such a way that it is a holding company as opposed to a nonprofit charitable entity deprives the subject property of an exemption under MCL 211.7o(3). That is not a technical denial, it is the correct application of Michigan law.
8. Under the applicable definition, Mooney is clearly not a religious society. The sole purpose of Mooney, as stated in its articles of incorporation is to "acquire, own and lease real property for the benefit of the Roman Catholic Archdiocese of Detroit . . . ." In other words, it is a holding company. This conclusion is supported by the fact that it has no employees and in its discovery answers could not identify a single event held by Mooney. It is true that Mooney is required to "operate exclusively for religious purposes within the meaning of section 501(c)(3) of the Internal Revenue Code" and operates "in strict conformity with, and subject to, the teachings of the Roman Catholic Church;" however, that has nothing to do with the teaching of religious truths and beliefs. The IRS provision is a requirement to maintain a 501(c)(3) status and has no requirement of teaching religious truths or belief. Canon law and the teachings of the Roman Catholic Church also do not require the teaching of religious beliefs; and even if they did, Mooney had no employees that could undertake the task. The simple fact, confirmed by its actual activities, is that Mooney was created, and exists, as a separate legal entity to hold title to property and then allow other entities to use that property. Mooney itself does not have as a purpose, let alone a predominate purpose, the teaching of anything. Mooney is simply not a religious society under MCL 211.7s.
9. The Nonprofit Corporation Act and Mooney's articles of incorporation mark a clear delineation between the Archbishop as an individual and representative of the Archdiocese and as a member of Mooney Real Estate Holdings. The Archbishop is a member but is treated as a director for all actions that could incur liability. Moreover, the separation between the Archdiocese, the Archbishop, and Mooney is further distinguished by the entities separate financial accounting and the Use Agreement. It appears that every possible step has been taken to allow the Archbishop to be involved with Mooney, but ensure that the Archbishop, and thus the Archdiocese, is insulated to the fullest extent allowable by law and to ensure that Mooney and the Archdiocese are separate legal entities. This purposeful delineation cannot be in effect for purposes of corporate liability and law but be disregarded for exemption purposes and that conclusion is well established in precedent.[8]

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[8] Respondent cites *City of Ann Arbor v University Cellar*, 401 Mich 279; 258 NW2d 1 (1977) (*University Cellar* 2) in support of this proposition. In that regard, Respondent states, in pertinent part:

10. Mooney is asking the Tribunal to set aside distinctions between the entities that are set forth in incorporating documents and formal legal agreements that would surely be raised if involved in civil litigation, pretend that certain facts simply did not exist, as well as set aside Michigan law and common sense. This is not only nonsensical, it is not proper. Mooney cannot claim an

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> Since the October 1977 decision in *University Cellar*, the Michigan Supreme Court has **not** addressed the validity of the pass-through exemption argument; however, the Court of Appeals has done so multiple times in published opinions. In *Czar's Inc v Dep't of Treasury*[, 233 Mich App 632; 593 NW2d 209 (1998),] the Court was called on to determine, in pertinent part, whether Czar's Inc. could claim an exemption through Grand Aire, a separate legal entity, albeit one with the same owner, who qualified for the requested exemption. Crucial to that case was that Czars could **not** qualify for the exemption **without** Grand Aire. The Court addressed the *Ann Arbor v University Cellar Inc.* arguments raised by the parties and found that in addition to a control issue the Court "cannot, as petitioner desires, simply ignore the Ann Arbor Court's 'hare and hounds' pronouncement. The *Ann Arbor* Court clearly intended that taxpayers not be able to assert or disregard arbitrarily their chosen corporate structures." Furthermore, "consistency in this matter is not, as petitioner insinuates, 'punishment' for tax planning." [Emphasis added.]

Respondent also stated, in pertinent part:

> In *Trinity Health*[*-Warde Lab LLC v Pittsfield Charter Twp*, 317 Mich App 629; 895 NW2d 226 (2016) *leave granted* SC Docket No. 154952], the Court addressed both *Ann Arbor* and *National Music Camp* [*v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977)] and found that the Tribunal "made an error of law in concluding that Ann Arbor stood for the proposition that a tax-exempt parent corporation could extend its tax-exempt status to a related entity." Furthermore, "*National Music Camp* is distinguishable because the corporations in that case were all tax-exempt" and would have otherwise qualified for the exemption but for the occupancy issue." In concluding that Trinity Health did not qualify for the exemption, **the Court held that allowing the exemption pass-through 'would be contrary to the plain language of the statutes, which require the property to be owned by the non-profit organization seeking the exemption**." [Emphasis added.]

However, Respondent further stated, in pertinent part:

> The holding in *National Music Camp* is in line with the proposition that courts "generally avoid elevating formalities over substance," but is fundamentally different than the issue in this case. **The distinction in this case is not representative of formalities over substance and is fundamentally different for several reasons**. First, the entities are not only distinct from each other, **but their relationship is governed by a series of articles of incorporation, articles of organization, and the Use Agreement that purposefully delineate between the entities through formal legal documents, legal resolutions, and liability shields**. The incorporators of Mooney purposefully chose to create a distinct legal entity, transfer property from the Archdiocese to Mooney, and then allow use of the property by the Archdiocese through a formal legal document. The creation of Mooney as a distinct entity separate from the Archdiocese and the liability and other protections provided by the separation of the entities should not be set aside. [Emphasis added.]

Finally, Respondent also cites *Czars, Inc v Dep't of Treasury*, 233 Mich App 632; 593 NW2d 209 (1999) in support of this proposition.

exemption by creating a legal fiction of an entity by separating and combining parts of various entities while at the same time maintaining that those entities and their parts are separate. Indeed, the very fact that Mooney had to pay the Archdiocese for the use of certain professionals when transferring the property is the perfect example of the existing distinctions between the entities. Moreover, any relationship defined by canon, as opposed to Michigan, law such as an "integrated auxiliary," is not relevant as Michigan law controls the outcome of this case.

PETITIONER'S RESPONSE TO RESPONDENT'S CONTENTIONS

In its Response, Petitioner contends that:

1. Mooney was formed in order to carry out directives from the seat of the Roman Catholic Church, and for the undeniably religious and charitable purpose of making its properties available for an indefinite number of people to receive the sacraments and religious teaching. Acting through its officers and board of directors, Mooney carried out those purposes by entering into the Use Agreement, and later by conveying the subject property to the applicable parish once it was incorporated. In short, Mooney is not the kind of "ephemeral organization lacking a sincere purpose" which concerned the *Institute* court when it created the religious society test. Southfield offers no alternative reason for Mooney's existence, nor does Southfield claim that Mooney carries out some other purpose unrelated to religious or charitable activities (e.g., operating a for-profit business). As *Wexford* observed in a similar situation, "these omissions [are] telling." It is worth emphasizing that the property that is the subject of this appeal is the location of a church – the core of the house of public worship exemption. Arguably the Tribunal can and should stop there and grant Mooney's motion.[9]
2. Southfield appears to use the term "holding company" in order to oversimplify and avoid a careful analysis of why Mooney was formed and what it actually does. Southfield uses the term pejoratively to imply that Mooney cannot engage in any activities because it has no employees, and therefore cannot be exempt. Corporate entities, however, act not only through employees but through other agents as well [i.e., "[a] charitable institution's members, employees, or volunteers may dwell on the property or at least be habitually present on the property, which is consistent with the meaning of 'reside'" citing *Liberty Hill* at 56]. Although Mooney does not have employees, it has three volunteer officers and a board of seven directors through which the entity operates and actively conducts its business. Mooney's board has regular meetings, one of Mooney's officers signed the Use Agreement with

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[9] Notwithstanding the above, Petitioner also contents, in pertinent part, that "Mooney was formed to 'acquire, own and lease real property for the benefit of' the Archdiocese and related parties." Petitioner further contends that "[t]he court did not purport to add a third requirement to the clear statutory language, i.e., a "unity of ownership and use" requirement" and "[n]o court applying Institute has reached such a conclusion either."

the Archbishop, and another signed the deed transferring the subject property from Mooney to the incorporated parish in 2019. Mooney has the power to act through its agents, just as other corporate entities do.[10]

3. *Wexford* itself makes no distinction between active and passive activities, and it certainly does not hold that only the former category qualifies an entity as charitable. The Tribunal should not accept Southfield's invitation to create a new *Wexford* factor.
4. Assuming the other factors are satisfied (e.g., the service is provided as a gift for the benefit of an indefinite number of people), there is no rational reason why the entity that directly provides the service to the end user should be treated more favorably than an upstream entity that accomplishes the same thing.[11]
5. Southfield has cited no authority for its argument that a religious society under MCL 211.7s must employ people who directly teach religious beliefs. Indeed, the Court of Appeals expressly rejected such a narrow and formalistic approach in *Institute* . . . . No case applying *Institute* has adopted the paradigm that Southfield urges on the Tribunal. To the contrary, in its moving

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[10] Respondent also contends that "[a]s explained in Mooney's moving brief, under *Camp Retreats*, Mooney satisfies the occupancy element of MCL 211.7o(1) by virtue of the regular physical presence of the members and employees of the Archdiocese and parish at the subject property."

[11] Petitioner cites the unpublished opinion *per curiam* issued by the Court of Appeals in *Chelsea Health & Wellness Foundation v Scio Twp* on October 12, 2017 (Docket No. 332483), *appeal denied*, 502 Mich 879; 912 NW2d 551 (2018) for the proposition that the "prevalence" of indirect activities did not prevent the Court of Appeals from concluding that the "Foundation" was a charitable institution. In that regard, Petitioner also states, in pertinent part:

> Chelsea's conclusion is hardly surprising - it is commonplace for charities to accomplish their purposes by providing funding, property, or other support to separate individuals or organizations to enable them to deploy their staff, volunteers, etc. to directly provide services to the end user. Grant foundations are a prime example.

The Court of Appeals did, however, also state, in pertinent part:

> . . . **the tribunal correctly determined that the Foundation is organized chiefly, if not solely, for charity** . . . . [and] [t]he Foundation fulfills its stated purposes **by using its considerable resources to fund coalition initiatives** that further at least **one of the Foundation's four vision elements**, which, in turn, advances the Foundation's overall organizational purpose of making significant, measurable, and sustainable improvements in the health and wellness of residents within the service area. The Foundation also operates wellness centers where members may exercise and the community at large can participate in health-based educational programs in a group setting. Although the Foundation charges monthly fees to its wellness center members, many of the Foundation-funded initiatives are provided to the community free of cost. Other opportunities, like the Next Steps program, are available for a fee that is less than the cost incurred by the Foundation. And for the reasons explained in our analysis of factor 4, **the Foundation's gifts to the community** also meet the definition of "charity" because they lessen the burdens of government. Accordingly**, because the Foundation's stated organizational purposes are charitable**, **and its activities are consistent with those self-identified purposes**, the tribunal correctly concluded that the Foundation satisfied *Wexford* factor 2. Emphasis added.]

brief Mooney discussed in detail a case wholly at odds with that paradigm . . . . The *Dominion* petitioner operated a television tower and related equipment and used those facilities to broadcast religious teaching created by third parties. Petitioner's agents did not directly teach any religious truths or beliefs to petitioner's viewers, nor were they physically present on the site. The Tribunal concluded that Dominion was nevertheless exempt under MCL 211.7s and 7o.

6. At their core, the *Wexford* test for charitable organizations and the *Institute* test for religious societies are designed to ferret out entities who do not truly meet the purposes of the exempt statutes. A charitable organization benefits from tax exemption because it provides a gift to society for society's betterment. Fairly stated, that is exactly what Mooney does – it permits its hundreds of properties to be used free of charge by countless members of society for religious instruction and other benefits (e.g., attendance at Alcoholics Anonymous meetings). A religious society benefits from tax exemption because it spreads religious truths and beliefs for society's betterment. See Const 1963, art 8, § 1 ("Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."). Fairly stated, that is exactly what Mooney does – it provides the locations where religious teaching can take place at hundreds of properties throughout southeast Michigan.
7. Another way to test Mooney under these standards is to consider what Mooney does not do – Mooney does **not** operate for profit; it does **not** operate to benefit its agents or a small subset of society; it does **not** operate to spread a loose of set of principles that do **not** correspond to the exercise of religion. Southfield does not argue otherwise.
8. With all of these hurdles cleared, there is no justification for placing another one in Mooney's path. Southfield has given the Tribunal neither authority nor coherent argument why an exempt organization also must be "active" or "proactive" (whatever those terms mean).
9. These statutory sections and the historical practices of the Archdiocese make clear that, while Mooney's properties historically have been titled in the name of a bishop or archbishop of the Archdiocese of Detroit, the Archbishop held those properties in trust for religious and other charitable purposes of the Roman Catholic Church. In other words, the Archbishop held property not for a class of one (as suggested by Southfield) but for a class of many—the Archdiocese, its parishes, related organizations, and ultimately individual Catholics. In practice, the Archbishop made those properties available to the parishes for the direct provisions of religious and other charitable services to millions of individuals. Despite its pedigree, even the Archdiocese's longstanding practices arguably would fail Southfield's direct-active/indirect-inactive test. If that result does not demonstrate the folly of adopting Southfield's reasoning, then nothing does. Southfield seems to have the quaint perspective that a religious society must be the proverbial church on

the hill, which owns one chapel and directly employs the individuals who provide the religious services. While there are undoubtedly churches that function that way, the Archdiocese is not one of them.

10. At the end of its brief, Southfield addresses an argument that Mooney has never made – that Mooney simply tries to piggyback on the exempt status of the Archdiocese. As should be clear from its brief and exhibits, Mooney is entitled to exemption on its own merits. Mooney relies on its own organizational documents, an affidavit from one of its officers, the Use Agreement that it signed, the deed by which it transferred property to the incorporated parish in 2019, the pages of the Catholic Directory identifying it as a Catholic organization, its status as a public charity and a church under federal tax law, et cetera. Mooney has gone to great lengths to explain why its activities – making property available for the benefit of religious and charitable services – entitle it to exemption. Mooney would not have bothered to gather and present any of those facts or arguments if it simply sought to pass-through the Archdiocese's exempt status.

STANDARD OF REVIEW

As for the Tribunal's review of the instant Motions, there are no specific Tribunal rules governing motions for summary disposition. Thus, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[12]

With respect to the instant Motions, Petitioner moves for summary disposition under MCR 2.116(C)(10), and Respondent moves for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10).

A. *Motions for Summary Disposition under MCR 2.116(C)(8).*

MCR 2.116(C)(8) provides for summary disposition when "the opposing party has failed to state a claim on which relief can be granted."[13] A motion under this rule "tests the legal sufficiency of the complaint" and "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant."[14] Such motions "may be granted **only** where the claims alleged are 'so **clearly unenforceable as a matter of law** that **no** factual development could possibly justify recovery."[15]

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[12] See TTR 215.
[13] See *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).
[14] *Id.* (citations omitted).
[15] *Id.* (citations omitted).

[Emphasis added.] Further, "when deciding a motion brought under this section, a court considers **only** the pleadings."[16] [Emphasis added.]

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

With respect to summary disposition under MCR 2.116(C)(10), such motions test 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.[17] Additionally, it has also been held that (i) a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party,[18] (ii) the moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider and,[19] (iii) the burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists, (iv) where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists,[20] and (v) if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[21]

CONCLUSIONS OF LAW

The Tribunal, having carefully considered to the Motions and the Responses under MCR 2.116(C)(8) and (C)(10), finds that there are no genuine issues of material fact and that the granting of summary disposition in favor Petitioner under MCR 2.116(C)(10) is warranted at this time even though Petitioner, as an independent entity,

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[16] *Id*. (citations omitted).
[17] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). See also *Maiden*, *supra* at 120.
[18] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[19] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[20] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[21] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

would not in its own right be entitled to exemption under MCL 211.7o(1), MCL 211.7o(3), or MCL 211.7s for the tax year at issue.

Initially, the Tribunal finds that Respondent's argument under MCR 2.116(C)(8) is wholly unsupported. A motion under this subsection relies upon a finding that Petitioner's pleadings are so untenable that the Tribunal must reject them because no set of facts would support a finding for Petitioner under the pleadings. Seemingly sensing the weakness of this argument, Respondent's Motion does not even address Petitioner's pleadings in detail. The Tribunal finds that Petitioner's Petition clearly exceeds the standards upon which dismissal would be appropriate under MCR 2.116(C)(8), and Respondent's Motion on these grounds must be denied.

Both parties contend that summary disposition under MCR 2.116(C)(10) is appropriate; however, each contends the decision should be in its favor. Petitioner claims that it is a charitable institution and qualifies for a property tax exemption under MCL 211.7o(1), which states:

> Real 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** is exempt from the collection of taxes under this act. [Emphasis added.]

Respondent questions, among other claims, whether Petitioner occupies the subject property, claiming instead that the subject is occupied by the Archdiocese and that Petitioner is a distinct legal entity with no regular physical presence at the property. By contrast, Petitioner claims that its occupancy is satisfied through its use agreement with the Archdiocese and the regular physical presence of the employees of the Archdiocese.

A charitable institution must have a regular physical presence at a property to occupy it for a charitable exemption under MCL 211.7o(1).[22] A finding that a non-profit occupies a property merely by virtue of the fact that the property is being used in a manner consistent with its purpose is at odds with the statutory language.[23] Although

[22] See *Liberty Hill*, *supra* at 58.
[23] See *Liberty Hill*, *supra* at 58-59.

the Tribunal agrees with Petitioner that the mere presence of a cellular tower does not negate the property's entitlement to exemption because the Michigan Court of Appeals has explicitly rejected a quantum of use test,[24] the plain facts do not support Petitioner's claim that it maintained a regular physical presence upon the property. There is no evidence of Petitioner's "volunteers" visiting the subject property even a single time during the year at issue. Instead, Petitioner claims that occupancy is met "by virtue of the regular physical presence on the property of the members and employees of the Archdiocese and parish."[25] The Tribunal disagrees and is not convinced that it should look past several published cases to rely upon the unpublished *Camp Retreats* decision as proposed by Petitioner.[26]

In the precedent-setting *Liberty Hill* case, the exemption claimant did not occupy the subject property. Instead, it entered into leases with occupants in a manner consistent with its nonprofit charitable purpose, which the Court found to be insufficient to satisfy the occupancy requirement. Petitioner in this case entered into a use agreement with the Archdiocese for use of the property by the Archdiocese or, more specifically, Our Lady of Albanians for religious and charitable purposes. Its only examples connecting it to the subject property for occupancy purposes during either the tax year at issue or the subsequent tax year are the signing of the use agreement with the Archdiocese and the transferring of the subject property to the subject local parish (i.e., Our Lady of Albanians) after its incorporation. Petitioner cannot point to a single instance where its "agents" occupied the property.[27] Rather, Petitioner relies on the occupancy of the property by its sole member (i.e., the Archdiocese) and its members or employees to satisfy its required occupancy of the property. Further, occupancy by

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[24] See *IBLP*, *supra* at 19.
[25] See Petitioner's Motion at p 25.
[26] *Camp Retreats* is an unpublished opinion, and such opinions are not "precedentially binding." Nevertheless, "a court may nonetheless consider such opinions for their instructive or persuasive value." See *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017). See also TTR 261 and 215, and MCR 7.215(C)(1). Although Petitioner claims that it satisfies the occupancy element of MCL 211.7o(1) under *Camp Retreats* by virtue of the regular physical presence of the members and employees of the Archdiocese and parish at the subject property, Petitioner **failed** to properly distinguish the *Liberty Hill* case and gave no indication, **despite the underlying court rule**, as to why that unpublished decision is appropriate given the existing **contrary** published authority (i.e., *Liberty Hill*).
[27] It has no employees and its agents, if any, our members of the Archdiocese.

agents acting upon behalf of another party is, according to the Court of Appeals, not sufficient to satisfy the occupancy standard. For example, in *Chelsea Health & Wellness*, the Court of Appeals engaged in a careful analysis of the Tribunal's determination of facts with respect to the claimant's employees, who had a minimal presence at the property compared to the employees of the claimant's agent hired to manage the property. If the employees of a duly authorized agent had been able to occupy on behalf of the claimant, the appellate court analysis would not have tracked the activities of the claimant's employees so specifically. While the agent in this case is admittedly a not-for-profit entity, unlike as in *Chelsea Health*, the Court's analysis of occupancy depends upon the tax-exempt status of the occupying agent. As a result, Petitioner has failed to establish any physical presence at the property, much less a regular one, that would sufficiently satisfy the occupancy claim under MCL 211.7o(1). Thus, that portion of Petitioner's claim is denied.

For a charitable institution that does **not** occupy a property, there is still an opportunity to claim an exemption. MCL 211.7o(3) states:

> Real or personal property owned **by a nonprofit charitable institution or charitable trust** that is leased, loaned, or otherwise made available **to another nonprofit charitable institution** or charitable trust or to a nonprofit hospital or a nonprofit educational institution that is occupied by that nonprofit charitable institution, charitable trust, nonprofit hospital, or nonprofit educational institution solely for the purposes for which that nonprofit charitable institution, charitable trust, nonprofit hospital, or nonprofit educational institution was organized or established and that would be exempt from taxes collected under this act if the real or personal property were occupied by the lessor nonprofit charitable institution or charitable trust solely for the purposes for which the lessor charitable nonprofit institution was organized or the charitable trust was established is exempt from the collection of taxes under this act. [Emphasis added.]

Here, it is undisputed that the entity occupying the subject property, the Archdiocese, is a charitable institution and maintained a regular physical presence at the property solely for the purposes for which it was organized or established. However, Respondent disputes Petitioner's qualification under this subsection because it claims that Petitioner does not meet three parts of the six-part test of a charitable institution set forth in *Wexford*.

The test, as established by the Michigan Supreme Court, is:

(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.[28]

Respondent disputes Petitioner’s qualification under factors two, three, and four. Specifically, it contends Petitioner’s actions are not intended to benefit the greater good but instead must explicitly benefit the Archdiocese and that Petitioner is not organized chiefly for charity but instead is organized as a real estate holding company. And while Respondent contends that the Archdiocese clearly has a charitable purpose in religion, that does not extend to Petitioner. Petitioner disagrees and contends that each of these factors is met. However, Petitioner’s Articles indicate, in pertinent part, that Petitioner is organized:

> [II] A. [t]o receive and administer funds and property and to operate exclusively for religious purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, and, in particular, to acquire, own and lease real property for the benefit of the Roman Catholic Archdiocese of Detroit . . .
> [II] B. To **acquire, own, dispose of and deal with real and personal property and interests** therein and to apply gifts, grants, bequests and

[28] See *Wexford*, *supra* at 215.

> devises and their proceeds in furtherance of the purposes of the corporation. [Emphasis added.]
>
> [II] C. To do such things and to perform such acts to accomplish its purposes as the Board of Directors may determine to be appropriate and as are not forbidden by section 501(c)(3) of the Internal Revenue Code, with all the power conferred on nonprofit corporations under the laws of the State of Michigan.

The Articles go on to state that Petitioner "shall operate in strict conformity with, and subject to, the teachings of the Roman Catholic Church . . . ." and, in pertinent part:

> The corporation is organized and at all times shall be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of . . . (1) the Roman Catholic Archdiocese of Detroit, (2) the Roman Catholic's Archdiocese of Detroit's parishes, schools, cemeteries, and other ministries, (3) Sacred Heart Major Seminary, and (4) other religious, charitable and educational organizations acceptable to the member that are operating within the geographic boundaries of the Roman Catholic Archdiocese of Detroit.

Petitioner is further organized on a nonstock membership basis and has as its sole member, *ex officio*, the Archbishop of the Archdiocese (Archdiocese).

As for the *Wexford* factors, the second *Wexford* factor looks to Petitioner's organization. The Tribunal agrees with Respondent that Petitioner is organized neither solely nor chiefly for charity. By the plain language of the Articles, Petitioner is organized to operate for religious purposes and to acquire, own, lease, and dispose of real property on behalf of the Archdiocese. Petitioner does not deny this in its Motion but instead contends that it qualifies by making the property available to the Archdiocese and by working in conjunction with both the Archdiocese and Catholic authorities in Rome. As such, Petitioner seeks to place the activities of its sole member upon itself. These are the religious purposes contemplated in Petitioner's Articles, and it is undisputed that the property was made available to the Archdiocese to use for religious purposes. However, it is settled that Petitioner and the Archdiocese cannot be treated as interchangeable entities. "Even if the number of shareholders is very small, a

corporation exists as a separate legal entity apart from its shareholders."[29] Because the charitable activities of the Archdiocese cannot be imputed to Petitioner, the Tribunal agrees with Respondent that Petitioner is organized not for charitable purposes but primarily to acquire, lease, hold, and dispose of property. Although its activities are on behalf of a charitable institution, that alone does not mean that Petitioner is a charitable institution.

Petitioner also asks the Tribunal to consider its actions beyond the words in its Articles like the exemption claimant in *Camp Retreats*. In that case, the claimant's articles of incorporation indicated it was incorporated primarily for the "promotion of athletic sport pastimes dedicated to young adults and children."[30] The Court of Appeals rejected the Tribunal's strict reliance upon the claimant's articles and instead looked to its operations. The Court found that the Tribunal's own findings demonstrated that the claimant actually used the property to bring together members of the Islamic faith and, as such, was actually acting to bring peoples' minds under the influence of religion. Here, Petitioner's sole activity was to make the property available to the Archdiocese for religious purposes through the use agreement. Solely making the property available to another entity for the purpose of conducting charitable institution activities does not comply with the holding in *Camp Retreats*, in which the claimant itself provided charitable services at the property. As such, Petitioner cannot be exempt from taxation under MCL 211.7o because it does not meet the second *Wexford* factor. Petitioner also argues the fact that Petitioner is a church for determining the allowance of a deduction for federal income tax purposes, but the Tribunal finds this is not dispositive under the *Wexford* analysis.

Similar reasoning results in Petitioner failing to meet either the third or fourth *Wexford* factor. With respect to offering charity on a non-discriminatory basis, it contends that the Archdiocese offers these services on a non-discriminatory basis and identified several charitable services of the Archdiocese. It also contends that its activities bring people's minds or hearts under the influence of the Catholic religion.

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[29] See *Kern v Kern-Koskela*, 320 Mich App 212, 227, *quoting Fassihi v Sommers et al*, 107 Mich App 509, 514; 309 NW2d 645 (1981).
[30] See *Camp Retreats*, *supra*.

Again, it is undisputed that the Archdiocese does these things, but as with the second factor, the Tribunal finds that these requirements cannot be imputed from the Archdiocese to Petitioner based solely upon Petitioner's Articles or the subject property's use agreement. As a result, Petitioner does not meet the definition of a charitable institute and is not eligible for the exemption under MCL 211.7o(1) or MCL 211.7o(3).

Petitioner also contends that it qualifies for an exemption as a religious entity under MCL 211.7s, which 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.

Although Respondent does not contest that the subject was used for religious and parsonage purposes on the relevant tax day or that the building was used for the teaching of religious truths, it contends that Petitioner, the subject owner, is not a religious society and that the ownership cannot be separated from the entity performing the teaching of religious truths and case law supports the conclusion that the decision of the Archdiocese to hold that property in a different entity while its respective member churches sought incorporation removed the subject property from the ownership of a religious society.

This holding stems from the precedent-setting Court of Appeals decision in *IBLP.* The exemption claimant in that case was a nonprofit corporation organized for nondenominational religious purposes. The Tribunal found that a minimum of its seminars conducted at the property were organized around religious principles. The Tribunal's opinion found that the claimant was not a religious society because it "has no members and prescribes no form of worship that a religious society would." The Tribunal relied upon facts such as the claimant's focus on teaching and inspiration rather than worship, its lack of tithes, and its focus upon the topic of character rather

than spirituality.[31] The Court of Appeals rejected that reasoning, instead focusing on the teaching of religious truths as being the primary qualification for determining whether an entity is a religious society. In more recent decisions, the test has also been stated differently. The Court of Appeals in *SRMHC* described the relevant test as a two-prong test: "whether the predominant purpose and practice include teaching religious truths and beliefs; and, whether the entire property was used in a manner consistent with the purposes of the owning institution."[32] Regardless of how the test is stated, the Court of Appeals has consistently held that the teaching of religious truths is the core determinant of a religious society. *IBLP* was the basis for the Tribunal's rationale in *Presiding Bishop*. There, the Tribunal sought to determine whether certain student housing owned and used by the Church of Latter-day Saints was eligible for the charitable and religious exemptions. In holding that it did qualify for the religious exemption, the Tribunal found that the claimant was, in pertinent part, an organization devoted to the teaching of religious truths, which is distinguishable from Petitioner. The Tribunal also followed that precedent in *Dominion*, wherein a nondenominational broadcasting company primarily devoted to Christian programming stated in its articles of incorporation that this programming was part of its "teaching" mission. That organization was found to be in line with the *IBLP* test and granted the exemption. Here, although Petitioner's Articles contend that it shall operate in conformity with Catholic teachings, those Articles do not purport that Petitioner is organized for the purposes of such teaching itself.[33]

Petitioner argues that this reading reduces it to a mere "holding company," minimizing what it does. The Archdiocese, through Petitioner, has the power to "acquire,

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[31] See *Institute in Basic Life Principles, Inc v Watersmeet Twp*, MOAHR Docket Nos. 110057 and 161417 (issued April 13, 1994).
[32] See *SRMHC, supra* at 12.
[33] More specifically, the Tribunal is, contrary to Petitioner's contention, required to look at Petitioner's activities and not the activities of the Archdiocese. As such, the Tribunal gives no weight to the argument that Petitioner "could" have occupied the property for religious purposes, as it must look to the property's actual use as of tax day. This contention also misconstrues the "teaching" holding in *IBLP* and the Tribunal finds no support in case law that the owning entity need not engage in the teaching of religious truths under MCL 211.7s, as argued by Petitioner. Because Petitioner does **not** engage in the teaching of religious truths and because the activities of the Archdiocese **cannot** be imputed to Petitioner either through the Articles or use agreement, Petitioner is **not** a religious society for purposes of MCL 211.7s.

purchase, hold, convey, lease, mortgage, and in every way deal in real and personal property of all kinds without limitation."[34] Petitioner's Motion provides relevant background on the reasons why the property was transferred in 2018. Title to the Church's various Michigan holdings were in the names of individual bishops and cardinals, and the Archdiocese sought to have title of the respective properties transferred to the individual parishes upon incorporation.

It is undisputed that Petitioner performs services for the sole benefit of a religious society, but Petitioner also fails to cite any examples that it, and not the Archdiocese, is engaged in the teaching of religious truths, which is described in case law as the activity underpinning the exemption.

In likely anticipation that the Tribunal would rely upon *IBLP* rather than the unpublished *Camp Retreats* holding, Petitioner argues in its response to Respondent's Motion that its own employees and agents need not be responsible for satisfying the teaching requirement and that it may be imputed upon Petitioner because its Articles state that its dedicated purpose is supporting the Archdiocese. In doing so, it misconstrues the holding of both *IBLP* and *Dominion*, both of which looked to the respective articles of those organizations indicating that they were organized for the respective purposes of the teaching of religious truths, unlike itself. And even if reliance upon *Camp Retreats* was appropriate, which it is not, Petitioner is distinguishable from the claimant in that case because it is not the organization acting in concert with the meaning of the statute as that claimant was. Here, Petitioner tries to impute those actions upon itself, but that interpretation is beyond all case law interpreting exemption statutes.

As for Respondent's "pass-through" arguments, Respondent argues that Petitioner's position may have been adopted by the Court of Appeals in its consideration of *University Cellar* 1 in which it held that corporate makeup, management, funding, and the degree of control of the associated organization were some factors to be considered in determining whether a qualifying exempt organization sufficiently controls the exemption claimant, but that said policy was short-lived, as the Michigan Supreme

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[34] See MCL 458.2(c).

Court explicitly found that conflating the organizations was in error.[35] However, that policy was short-lived, as the Michigan Supreme Court explicitly found that conflating the organizations was in error.[36] Nevertheless, the Supreme Court did, however, also state:

> We conclude, assuming, again, that the Legislature **intended** to permit an exempt organization to extend its exemption to a non-exempt organization, that it did **not** intend to permit such extension **without retention of managerial and operational control of the non-exempt organization**, **and that absent such control**, the property of the non-exempt organization is **not** the property of the exempt organization within the meaning of the statutory exemption for personal property belonging to the state and for personal property belonging to incorporated charitable, educational and scientific institutions.[37] [Emphasis added.]

Although Respondent acknowledges its reliance on *National Music Camp* that there may be cases where "under some circumstances, the technically legal owner of the property and the functionally effective owner of the property can be deeded the same for tax exemption purposes even if they are otherwise distinct entities," Respondent also states, in pertinent part, that the Court's "hare and hounds pronouncement" in *University Cellars* 2 is "directly applicable to the issues in this case."[38] In support of that statement, Respondent relies in part on *Trinity Health*, which

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[35] See *City of Ann Arbor v University Cellar Inc*, 65 Mich App 512, 519-520; 237 NW2d 535 (1975), *rev'd*, 401 Mich 279; 258 NW2d 1 (1977) (*University Cellar* 1). See also *University Cellar* 2, *supra* at 291-292.
[36] See *University Cellar* 2, *supra* at 287.
[37] See *University Cellar* 2, *supra* at 293-294.
[38] See the unpublished opinion *per curiam* issued by the Court of Appeals in *Bldg Corp of Detroit Elec Indus Apprentice & Journeyman Training Fund v City of Warren* on July 24, 2018 (Docket No. 339292) and *University Cellar* 2, *supra* at 291-292. See also *Czars, Inc v Dep't of Treasury*, 233 Mich App 632; 641-642; 593 NW2d 209 (1999), which provides, in pertinent part:

> . . . we cannot, as petitioner desires, simply ignore the *Ann Arbor* Court's "hare and hounds" pronouncement. The *Ann Arbor* Court clearly intended that taxpayers not be able to assert or disregard arbitrarily their chosen corporate structures to suit the occasion. Having created separate corporate entities in the belief that his businesses would save money, Cheema cannot expect us to undo his efforts merely because, in hindsight, the creation of separate corporate entities has proved disadvantageous. Our consistency in this matter is not, as petitioner insinuates, "punishment" for tax planning.

Czars is, however, also distinguishable, as the case involved "'sister corporations' that are controlled by a by a common entity" with the Court stating at 642:

the Tribunal finds to be distinguishable due to the claimant in that case being a for-profit entity.[39] The Court of Appeals did, however, state, in reference to *University Cellar* 2:

> The Supreme Court specifically did not decide "whether a tax exempt organization may extend its exemption to a separate corporation, albeit one organized to carry out the exempt purpose." *Id.* at 285, 258 N.W.2d 1. Our Supreme Court explicitly assumed, without deciding, that the Legislature intended to permit an exempt organization to extend its exemption to a nonexempt organization. *Id.* at 293, 258 N.W.2d 1. However, the *Ann Arbor* Court expressed caution on that issue:
>
> > To disregard the corporate entity and treat the Cellar as the alter ego of the University for tax exemption purposes, and yet regard it as a separate entity for purposes of determining whether the University is subject to liability to unpaid suppliers or to customers who are injured on the premises or by defective products would be to run with the hare and hunt with the hounds. [*Id.* at 291–292, 258 N.W.2d 1.]
>
> It is axiomatic that a court is **not** bound on a point of law that a previous court did **not** actually consider or decide. *Andrews v Booth,* 148 Mich 333, 335; 111 NW 1059 (1907). **The *Ann Arbor* Court expressly declined to decide the question, and we conclude that the Tribunal made an error of law in concluding that *Ann Arbor* stood for the proposition that a tax-exempt parent corporation could extend its tax-exempt status to a related entity**.[40] [Emphasis added.]

Although the *Trinity Health* Court found that the *National Music Camp* case would be distinguishable from the facts in *Trinity Health* and, for that matter, the instant case "because the corporations in that case were all tax-exempt," the Court of Appeals in *National Music Camp* also stated:

> **The substance of an arrangement rather than its form should be the guiding principle in determining ownership and tax exemption status**. See *United Artists Corp v Dep't of Treasury*, 66 Mich App 289, 295; 238 NW2d 841 (1975); *Ann Arbor*, *supra*, 65 Mich App at 517-518;

> . . . a taxpayer who creates multiple corporations to conduct different functions of a business enterprise could avoid tax liability for all of them by structuring just one to benefit from a statutory exemption. Such a ruling would grossly undermine the policy and intent of the tax law.

[39] See *Trinity Health*, *supra* at 636.
[40] See *Trinity Health*, *supra* at 634-635. However, said related entity was, unlike Petitioner, a for-profit entity, as indicated above.

> 237 NW2d 535. **In the instant case there is technically no umbrella corporation**, but as dissenting tax judge Koney pointed out, **the purposes, officers, directors, management and location of the four Interlochen educational corporations are so comingled, interwoven and connected that they are in reality and for all practical purposes one corporation**. Or to look at it in another way, the Interlochen Board of Trustees and Officers are the common umbrella. The four corporations are merely the board's functioning arms. Any other result exalts form over substance. [Emphasis added.][41]

In that regard, Petitioner argues that it operates in a manner not inconsistent with the Archdiocese or, more specifically, for the sole benefit of the Archdiocese, which is its sole member and **clearly** entitled in its own right to the requested exemptions given its use of the property, and Respondent's Motion fails to cite evidence to rebut these assertions. Additionally, Petitioner is a non-profit entity with no employees and has not contracted with any independent contractors. Rather, Petitioner's "managerial and operational" control was retained by the Archdiocese through three volunteer officers and a board of seven volunteer directors selected by the Archdiocese. Further, the Archdiocese's attorneys prepared the paperwork for the formation of Petitioner even though the Archdiocese was reimbursed by Petitioner for said work. As a result, and as so eloquently stated by the Court of Appeals, "[t]he ramifications of the above cases, taken together, are simple: technicalities of legal ownership or occupancy **might be overlooked under some circumstances**, where there is for some reason little practical distinction between the owner and the occupant even if they are strictly distinct legal entities."[42] [Emphasis added.] More specifically, there is, with the exception of the

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[41] See *National Music Camp*, *supra* at 614 and 615, which provides, in pertinent part:

> **Where the subject property is clearly used** for educational purposes **within the meaning of the tax exemption statute**, **it would be unreasonable to deny tax exempt status on the basis of corporate organization**. Obviously, the Interlochen facility is looked upon as one institution. **The organization treats itself basically as one organization sharing physical plant, personnel, trustees, and officers**. To force a purely technical corporate reorganization upon claimant with the loss of tax exemption status for intervening years would be to deny justice. **We cannot believe the Legislature intended the tax exemptions statute to catch bona fide** educational organizations **in such a fine mesh of legal technicalities**. [Emphasis added.]

[42] See *Bldg Corp of Detroit Elec Indus Apprentice & Journeyman Training Fund*, *supra*.

liability issue,[43] no practical distinction between Petitioner as the owner of the property and the Archdiocese as the occupant of the property to exalt the form of their arrangement (i.e., separate legal entities) over the substance of their arrangement (i.e., the holding of property for the sole benefit of and use by the Archdiocese until transferred to individual incorporated parishes under the Archdiocese), which renders the property at issue exempt from taxation under MCL 211.7o for the tax year at issue, but not MCL 211.7s inasmuch as Petitioner is clearly not a religious society, as indicated herein.

PROPOSED JUDGMENT

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

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

EXCEPTIONS

This is a **proposed** decision ("POJ") prepared by the Michigan Administrative Hearings System and **not** a final decision.[44] As such, **no** action should be taken based on this decision, as the parties have 20 days from date of entry of this POJ to **notify** the Tribunal **in writing if they do not agree with the POJ and** to **state in writing** why they do not agree with the POJ (i.e., exceptions). Exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions.

The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[45]

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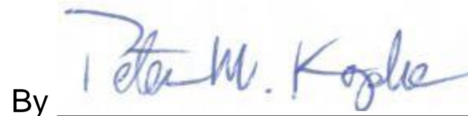
[43] Although protection from liability is pointed out as an issue in these cases, it is likely that the "form" of the instant arrangement could be "pierced," if appropriate, as Petitioner is, as indicated herein, nothing more than a "mere instrumentality" of the Archdiocese. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 457; 559 NW2d 379 (1996).
[44] See MCL 205.726.
[45] See MCL 205.762(2) and TTR 289(1) and (2).

A copy of a party's written exceptions or response must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party.

Exceptions and responses filed by *facsimile* will not be considered.

After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.



Entered: March 15, 2021 By ______________________
PMK/bw