

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Durand Aerie #3851, F.O.E.,
Petitioner,

v

Township of Vernon,
Respondent.

MTT Docket No. 307833

Tribunal Judge Presiding
Patricia L. Halm

FINAL ORDER AND JUDGMENT

On August 12, 2009, Administrative Law Judge Thomas A. Halick issued a Proposed Order denying Petitioner's Motion for Summary Disposition and a Proposed Order granting Summary Disposition in favor of Respondent under MCR 2.116(I). The Proposed Order provided, in pertinent part:

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)

After the expiration of the time period . . . the Tribunal will review the case file, the POJ, the exceptions and responses, if any, and:

- a. Issue a Final Opinion and Judgment adopting the POJ as a Final Decision.
- b. Issue a Final Opinion and Judgment modifying the POJ and adopting the Modified Proposed Opinion and Judgment as a Final Decision.
- c. Issue an Order vacating the POJ and ordering a rehearing or other action as is necessary and appropriate.

Neither party filed exceptions to the Proposed Opinion within the allotted time.

The Tribunal, having given due consideration to the Proposed Orders and the case file, adopts the August 12, 2009 Proposed Orders as the Tribunal's Final Decision in this case pursuant to MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law in the Proposed Order in this Final Order and Judgment. Therefore,

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

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

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

MICHIGAN TAX TRIBUNAL

Entered: March 17, 2010

By: Patricia L. Halm

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STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
MICHIGAN TAX TRIBUNAL

Durand Aerie # 3851,
Petitioner,

v

MTT Docket No. 307833

Township of Vernon,
Respondent.

Administrative Law Judge Presiding
Thomas A. Halick

PROPOSED ORDER DENYING PETITIONER'S
MOTION FOR SUMMARY DISPOSITION

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

ORDER TO ADJOURN HEARING

On June 10, 2009, Petitioner filed a Motion for Summary Disposition.

As of July 21, 2009, Respondent did not file a written response to the motion.

Overview

Petitioner claims that there is no genuine issue as to any material fact that it is entitled to an exemption from property taxes under MCL 211.7o for tax years 2004, 2005, 2006, 2007, 2008, and 2009. Petitioner alleges that it is entitled to an exemption under MCL 211.7o because the subject property "is used for charitable, fraternal functions." Petition, paragraph 3.

Standard of Review

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim. The Tribunal must consider the affidavits, pleadings, depositions, admissions, and other

documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists requiring trial. *Spiek v Dep't of Transportation*, 456 Mich 331; 572 NW2d 201 (1998). When determining whether there is a genuine issue of any material fact, the admissible evidence must be viewed in the light most favorable to the non-moving party. *Heckman v Detroit Chief of Police*, 267 Mich App 480; 705 NW2d 689 (2005). If the “affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.” MCR 2.116(I)(1). “If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.” MCR 2.116(I)(2).

Undisputed Facts

There is no genuine dispute regarding the following facts:

1. The subject property, parcel ID number 78-012-15-200-017-00, is classified as commercial real property.
2. The subject property, parcel ID number 78-012-59-180-000-00, is classified as commercial personal property.
3. Petitioner is exempt from federal income tax under IR 501(c)(10), as having a “fraternal purpose,” meaning that Petitioner operates under a lodge system, does not provide for the payment of life, sick, accident or other benefits to its members; and, devotes its net earnings exclusively to religious, charitable, scientific, educational, and fraternal purposes.
4. The facts set forth in paragraphs 5 through 9 were established in MTT Docket Number 306799 as relevant to the tax years 2004 and 2005, and are found to be applicable to this matter.
5. The subject property includes a food service operation, including a bar and social room, for its members and guests, who are served daily.
6. Petitioner’s employees, members, and auxiliary members provide services in the food service and bar operations.
7. Petitioner collects and remits Michigan Sales Tax on food and drink sales.
8. Petitioner had (for the 2004 and 2005 tax years) annual gross sales, including sales of food and drinks, of approximately \$800,000 to \$1,000,000 per year.
9. Petitioner has never been required to report unrelated trade or business income for federal income tax purposes during the years in question.
10. Typically, Petitioner earns no net income.
11. Petitioner regularly donates money to the Eagles Alzheimer Fund, Eagles Art Ehrmann Cancer Fund, Eagles D.D. Dunlap Kidney Fund, Eagles Golden Eagle Fund, Eagles Home Fund, Eagles Jimmy Durante’s Child Abuse Fund, Eagles Jimmy Durante’s Children’s Fund, Eagles Max Baer Heart Fund, Eagles Robert W. Hansen Diabetes Fund, The Old Newsboys for Shiawassee County, and others.
12. Petitioner obtained financing for the construction of the subject building based on a business plan that presumed that the tax exempt status enjoyed prior to 2004 would continue.
13. The loss of the exemption has required Petitioner to divert cash flow from charitable giving to payment of property taxes.
14. Respondent treated real property owned by Petitioner as exempt since the 1980’s.

15. Respondent placed the subject property on the taxable roll for tax years 2004, 2005, 2006, 2007, 2008, and 2009.

Law and Analysis

In *Fraternal Order of Eagles Aerie 2535, Inc v Big Rapids Township*, MTT Docket No. 284100, the Michigan Tax Tribunal held that a fraternal organization that met the requirements of IRC 501(c)(10) could not qualify for a property tax exemption under MCL 211.7o. The Tribunal held that the level of charitable contributions made by the fraternal organization was irrelevant to its status under MCL 211.7o.

“The fact that an organization incorporated as a fraternal organization makes some, whether *de minimis*, as is the Tribunal’s finding as to this Petitioner, or substantial contributions to charities does not make a fraternal organization a nonprofit charitable institution within the meaning of MCL 211.7o(1).” *Id.*

In that case (*Fraternal Order of Eagles Aerie 2535, Inc v Big Rapids Township*), the petitioner’s annual gross income ranged from \$178,444 (1998) to \$230,086 (2001); and its charitable giving was \$3,303.80 for 2000 and \$21,378.35 for 2001. This included cash donations and “soft dollar” usage of the banquet rooms for charitable causes. In our case, there are no facts alleged or asserted regarding Petitioner’s gross income. However, in a related case involving this same Petitioner (MTT Docket Number 306799) it was found that Petitioner’s gross income was \$800,000 to \$1,000,000 annually for 2004 and 2005, but its charitable contributions were less than \$50,000. In *Fraternal Order of Eagles Aerie 2535*, the Tribunal did not hold that a fraternal organization could qualify under MCL 211.7o if it met a certain level of charitable giving.

Petitioner claims that *Fraternal Order of Eagles Aerie 2535, Inc v Big Rapids Township, supra*, is not on point, because in that case, the petitioner was required to report unrelated taxable income for federal income tax purposes on form 990T, whereas, Petitioner has no unrelated taxable business income for any year at issue. Petitioner does not attempt to distinguish itself in any other regard from the property owner in *Fraternal Order of Eagles Aerie 2535, Inc v Big Rapids Township, supra*. The Tribunal’s opinion in that case establishes that the petitioner there did file form 990T for tax years 1999 through 2001.

There is no indication that the Tribunal’s decision in *Fraternal Order of Eagles Aerie 2535, Inc v Big Rapids Township, supra*, would be different if the petitioner in that case had not reported unrelated taxable business income on the federal form 990T. The Tribunal’s Opinion by Judge Smith does not indicate the amount of taxable income reported, but merely mentions that it was a “portion of its income.” The facts regarding the 990T were not outcome determinative. In a subsequent case that involved substantially similar facts, the Tribunal denied an exemption without finding that the “Eagles” organization in that case filed a form 990T. *Fraternal Order of Eagles, Owosso, Michigan Aerie 851 v City of Owosso*, MTT Docket No. 277272 (Sept. 30, 2003). The petitioner in that case was exempt from federal income tax under IRC 501(c)(7), rather than IRC 501(c)(10) as in our present case, but the legal reasoning supporting denial of the exemption was identical to *Fraternal Order of Eagles Aerie 2535, Inc v Big Rapids Township, supra*.

It is not disputed that Petitioner operates a bar and restaurant, in much the same fashion and with the same goals and purposes as the petitioner in *Fraternal Order of Eagles Aerie 2535, Inc v Big Rapids Township, supra*, and *Fraternal Order of Eagles, Owosso, Michigan Aerie 851 v City of Owosso, supra*. Petitioner is organized for purposes substantially similar to the petitioner in *Fraternal Order of Eagles Aerie 2535, Inc v Big Rapids Township, supra*.

Petitioner also cites a prior case issued by the Tax Tribunal's Small Claims Division, which held that a fraternal organization was exempt under MCL 211.7o for the tax years 1997 and 1998. However, *Montrose Blueberry Aerie 4090 v Township of Montrose*, MTT Docket No. 245387 was decided before the two cases cited above and is not accepted as having greater persuasive value than the more recent rulings issued by the Entire Tribunal.

Petitioner did not indicate the statute under which it is incorporated. However, Michigan law provides for the incorporation of fraternal societies under the Michigan General Corporation Act, 1931 PA 327. See MCL 450.133 (not the Michigan Business Corporation Act, 1972 PA 284; MCL 450.1101, et seq.) There is no evidence that Petitioner is organized under the Michigan Nonprofit Corporation Act, 1982 PA 162. An entity does not qualify for a tax exemption under MCL 211.7o merely because it is incorporated under the Michigan Nonprofit Corporation Act.

The relevant exemption statute is MCL 211.7o, which provides: "Property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act."

The statutory language is clear that an exemption claimant must be a "nonprofit charitable institution" and must be "incorporated" for a charitable purpose. Furthermore, the claimant must occupy the property solely for the nonprofit, charitable purpose for which it is incorporated.

Under Michigan law, fraternal organizations may be organized "for the purpose of forming a secret society or lodge for benevolent, charitable, social, educational or mutual aid purposes or for any other similar purpose or purposes not prohibited by law." MCL 450.133. "Local lodges" may incorporate under MCL 450.142 of the General Corporations Act, which sets forth the purposes for which a local fraternal organization may organize.

Local lodges; purpose. Any number of persons who are members in good standing in any lodge incorporated as a parent society or lodge within this state, and having a charter or permit from such parent lodge or society, may incorporate as a local lodge or branch thereof, upon complying with the provisions of this act appropriate to such corporations. The purpose of all such local lodge corporations shall be to further the interests of the parent corporation in such community, to hold the property of such local lodge or society and to become integral members of the parent lodge or society. MCL 450.142.

A local fraternal organization must organize to further the interests of the parent organization. In this case, Petitioner did not submit a copy of its articles of incorporation to prove its corporate purpose. However, in Docket No. 306799, this same Petitioner admitted into evidence a copy of the constitution of its parent organization, which Petitioner is bound to abide by. That constitution indicates that the predominant purpose is fraternal and not charitable. Petitioner is not organized solely for charitable purposes and the subject property is not used solely for charitable purposes. Petitioner's purpose is consistent with the constitution of its parent organization. That is, "To unite fraternally for mutual benefit" of its members and auxiliary members. Petitioner is organized for the same or substantially the same purposes as the "Eagles" organizations at issue in *Fraternal Order of Eagles Aerie 2535, Inc v Big Rapids Township, supra*, and *Fraternal Order of Eagles, Owosso, Michigan Arie 851 v City of Owosso, supra*. Although Petitioner's purpose includes raising funds and making charitable donations, this was not the sole use of the subject property. The subject parcel was used predominantly for the mutual aid or benefit of the members and their guests.

In order to qualify under IRC 501(c)(10), the Internal Revenue Service determined that Petitioner has a fraternal purpose, which means that the membership is based on a common tie or the pursuit of a common object for the mutual benefit of the members. Furthermore, based on guidance provided by the IRS, a fraternal organization must devote its net earnings exclusively to "religious, charitable, scientific, literary, educational, and fraternal purposes." [Emphasis Added.] Therefore, some part of the net earnings of a 501(c)(10) organization *must be* devoted to fraternal purposes as opposed to purely charitable purposes. In this case, Petitioner's self-defined fraternal purposes are not exclusively charitable, but for the mutual benefit of its members, according to the Constitution of the Fraternal Order of Eagles.

The sole fact offered by Petitioner for distinguishing this case from *Fraternal Order of Eagles Aerie 2535, Inc v Big Rapids Township*, is the filing of a federal form 990T by the petitioner in that case. This argument is largely nullified by the Tribunal's subsequent ruling in *Fraternal Order of Eagles, Owosso, Michigan Arie 851 v City of Owosso, supra*, which denied the exemption without a finding that the taxpayer filed a form 990T.

The operative facts in this case are not in dispute. Judgment is appropriate under MCR 2.116(I)(2). Petitioner is not incorporated as a "nonprofit charitable institution," is not organized exclusively for charitable purposes, and did not occupy or use the subject properties solely for charitable purposes as of the relevant tax days or during the tax years in question. Therefore, Petitioner is not exempt from real property taxes under MCL 211.7o.

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

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

IT IS FURTHER ORDERED that this appeal shall be DISMISSED and that this order shall have no effect upon the assessed and taxable values currently on the tax rolls for the years at issue.

IT IS FURTHER ORDERED that the hearing scheduled for August 17, 2009 is ADJOURNED.

MICHIGAN TAX TRIBUNAL

Entered: August 12, 2009

By: Thomas A. Halick

EXCEPTIONS

This Proposed Opinion and Judgment (POJ) was prepared by the State Office of Administrative Hearings and Rules. 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). The 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.

A copy of a party's written exceptions *must* be sent to the opposing party and the opposing party has 14 days from the date the exceptions were sent to that party to file a written response to the exceptions.

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, the POJ, the exceptions and responses, if any, and:

- a. Issue a Final Opinion and Judgment adopting the POJ as a Final Decision.
- b. Issue a Final Opinion and Judgment modifying the POJ and adopting the Modified Proposed Opinion and Judgment as a Final Decision.
- c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.