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

Harmony Montessori Center,
Petitioner,

v

MTT Docket No. 370214

City of Oak Park,
Respondent.

Tribunal Judge Presiding
Preeti P. Gadola

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Harmony Montessori Center, filed its petition, initiating the above-captioned appeal, on May 29, 2009. The petition indicates this matter involves issues relating to the 2009 March Board of Review's denial of an exemption for the Harmony Montessori Center, located in Oak Park, Michigan, parcel number 52-25-19-277-035. Petitioner contends that it is exempt from ad valorem property taxation under MCL 211.7n and/or MCL 211.7o.

On August 13, 2012, Petitioner filed a Motion for Summary Disposition under MCR 2.116(C)(10). On August 27, 2012, Respondent filed a response to the Motion.

On August 13, 2012, Respondent also filed a Motion for Summary Disposition under MCR 2.116(C)(10). On August 27, 2012, Petitioner filed a response to the Motion.

The Tribunal has reviewed the Motions, responses, and supporting documentation and finds that Petitioner has failed to establish that it is entitled to an exemption under either MCL 211.7n or 211.7o, and summary disposition cannot be granted in Petitioner's favor. The Tribunal

finds that summary disposition shall be granted in favor of Respondent, for the reasons stated below.

PETITIONER'S CONTENTIONS

Petitioner contends that it is entitled to exemption status under MCL 211.7n and/or MCL 211.7o. With regard to the claim for exemption under MCL 211.7n, Petitioner contends that the sole issue is whether it is an educational institution within the meaning of the statute. Petitioner cites to the requirement in *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980), that it must show that its programs "fit into the general scheme of education provided by the state and supported by public taxation . . . and [make] a substantial contribution to the relief of the burden of government." *Id.* at 755 – 756. Petitioner contends that its programs "clearly are in alignment with the general scheme of education" with regard to its kindergarten program. (Petitioner's Brief, p 12). Petitioner contends that kindergarten is within the state's general scheme of education under MCL 380.1561. Petitioner further contends that it relieves the state from the obligation to provide kindergarten instruction, since the students would otherwise participate in public education.

In addition, Petitioner argues that its preschool program fits within the general scheme of education, as the State Board of Education ("SBE") issued a report in 2006 regarding early development and education. Petitioner asserts that the Legislature has provided significant funding toward early education, "that is testament to Michigan's recognition that early education is within the state's general scheme of education supported by tax dollars." (Petitioner's Brief, p 13). Petitioner argues that this recent emphasis on early education is a policy shift from earlier cases involving education exemptions, like *Association of Little Friends v Escanaba*, 138 Mich App 302; 360 NW2d 602 (1984). Petitioner acknowledges that while the state does not currently

mandate early education, the absence of this mandate does not defeat Petitioner's claim for an exemption based on the recent policy shift. Petitioner further contends that it fits within the general scheme of education because the Montessori method "is a research-validated curriculum" that is in line with the SBE's quality standards. (Petitioner's Brief, p 15).

Petitioner argues that it also relieves the burden of government: "If Harmony did not exist, students and parents could not take advantage of Harmony's programs and would instead participate in state-financed programs." (Petitioner's Brief, p 16). Petitioner contends that while it charges tuition, the SBE recognizes that tuition is a legitimate funding source for program maintenance. Petitioner contends that it makes "a substantial contribution to the relief of the burden of government" because its students would otherwise enroll in state-financed programs. (Petitioner's Brief, p 17).

In regard to the charitable exemption found in MCL 211.7o, Petitioner contends that it meets all of the requirements set forth by the Supreme Court in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006). Petitioner states that the subject property is used a minimum of five days per week and dozens of students have participated in the program over the years. Petitioner contends that it is incorporated as a non-profit under the laws of the state and has been granted 501(c)(3) status by the federal government. Petitioner contends that its federal tax filings show that its expenses outweighed its revenue for two of the three tax years at issue. Petitioner contends that it fits within the definition of charity as provided in *Wexford* and other cases. Petitioner states that it brings the hearts and minds under the influence of education and "provides instruction on a cornucopia of topics in a unique student-driven environment employing what is known as the Montessori method." (Petitioner's Brief, p 9). Petitioner states that it was organized for the purposes of education and care of pre-school

children pursuant to the Articles of Incorporation. Petitioner argues that education has been recognized by the courts as a charitable endeavor, which establishes that Petitioner is organized chiefly for charity.

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner "must fit within the K-12 educational system supported by taxes and must substantially relieve that burden on the government" in order to receive an exemption under MCL 211.7n. (Respondent's Brief, p 5). Respondent argues that the preschool program, which is the bulk of the activities, does not qualify for the exemption, under the ruling in *Association of Little Friends, supra*. Respondent further argues that Petitioner's kindergarten program does not substantially relieve the burden of government. Respondent cites *David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968), which states: "[i]f the particular institution in issue were not in existence, then would, and could, a substantial portion of the student body who now attend that school instead attend a state-supported college or university to continue their advanced education in that same major field of study?" (Respondent's Brief, p 6). Respondent states that while that case related to higher education, the intent is that a substantial portion of the students would be attending a state-supported school if not attending Petitioner's program. Respondent states that "[t]here is no question that kindergarten is mandatory and that kindergarten students attending this school would be enrolled in the public schools if they were not attending a private institution." (Respondent's Brief, p 6). Respondent argues that out of 158 children over the four tax years at issue, only 12 were in kindergarten. Respondent contends that this is not a substantial portion of the total children in the program. Respondent further contends that Petitioner does not report to

the Michigan Department of Education as provided by the Nonpublic School Act and Petitioner's teachers are not certified by the state.

Respondent contends Petitioner meets items one and three under the three-part test set forth in *Wexford* regarding the charitable exemption under MCL 211.7o. Respondent argues that Petitioner does not meet the second item, that it must be a nonprofit charitable institution. Respondent contends that Petitioner is not organized chiefly for charity and does not have charity as its main goal in the Articles of Incorporation. Respondent argues that Petitioner's only claim can be that it "brings people's minds or hearts under the influence of education." (Respondent's Brief, p 10).

Respondent contends Petitioner charges tuition but has provided no evidence that it is tailored to its costs. Respondent argues that the tuition is comparable to the other Montessori schools/daycares reflected in the Joint Stipulation of Facts. Respondent states that Petitioner does offer discounted tuition to needy parents, but there is no information as to how often or what part of the budget this represents.

In response to Petitioner's Motion for Summary Disposition, Respondent contends that *Association of Little Friends* established a bright line rule that the "legislative scheme of education mandates neither preschool education nor vocational training . . . ." (Respondent's Response, p 2). Respondent argues that the Tribunal is bound by this precedent and Petitioner's argument to extend the law is more appropriately addressed by the Court of Appeals. Respondent further contends that Petitioner has failed to demonstrate that its kindergarten program relieves the burden of government.

Respondent further contends that Petitioner failed to utilize the six-factor test set forth in *Wexford* to analyze whether Petitioner meets the definition of a charitable institution. Respondent argues that Petitioner is not organized chiefly for charity.

FINDINGS OF FACT

On August 13, 2012, the parties filed a Joint Stipulation of Facts pursuant to the Tribunal's July 23, 2012, Summary of Prehearing Conference and Scheduling Order. The Joint Stipulation states as follows:

1. Petitioner in the above captioned matter, Harmony Montessori Center, operates early education programs including preschool and Kindergarten programs at its site (see Stipulation 4) in Oak Park, Michigan.
2. Respondent in the above captioned matter is the City of Oak Park, Michigan.
3. The subject property is located within the geographic confines, and under the taxing jurisdiction, of Respondent.
4. The property at the center of this controversy (the "subject property") is located at 26341 Coolidge Highway, Oak Park, Michigan 48237, and is identified as parcel number 52-25-19-277-035.
5. The tax years in issue in this case are 2009, 2010, 2011, and 2012.
6. Petitioner owned the subject property as of the relevant tax day for each of the years in issue.
7. As of the relevant tax days for each of the years in issue, Petitioner's occupancy of the subject property was solely for the purposes for which it was incorporated.
8. For each of the years in issue, Petitioner was a nonprofit entity.

9. Petitioner was organized as a nonprofit corporation under Michigan law.

10. The Internal Revenue Service has accorded Petitioner status as an IRC §501(c)(3) entity; Petitioner had such status as of tax day for each of the years in issue.

11. In providing educational services to preschool and Kindergarten students, Petitioner, for the tax years in issue, did not discriminate among recipients of its services.

12. For each of the years in issue, Petitioner charged fees for participation in its programs; these fees did not exceed the amount Petitioner required to provide its services.

13. For each of the years in issue, Petitioner reduced or eliminated tuition charges for students whose parents were unable to pay the full amount.

14. Petitioner holds a License for the Care of Children that was issued by the State of Michigan. The License was renewed effective April 15, 2012 and expires on April 14, 2014. The License names the subject property as the licensed facility.

15. The Montessori early education teaching method consists of

> Multiage groupings that foster peer learning, uninterrupted blocks of work time, and guided choice of work activity. In addition, a full complement of specially designed Montessori learning materials are meticulously arranged and available for use in an aesthetically pleasing environment.
>
> The teacher, child, and environment create a learning triangle. The classroom is prepared by the teacher to encourage independence, freedom within limits, and a sense of order. The child, through individual choice, makes use of what the environment offers to develop himself, interacting with the teacher when support and/or guidance is needed.
> Multiage groupings are a hallmark of the Montessori Method: younger children learn from older children; older children reinforce their learning by teaching concepts they have already mastered. This arrangement also mirrors the real world, where individuals work and socialize with people of all ages and dispositions.
>
> In early childhood, Montessori students learn through sensory-motor activities, working with materials that develop their cognitive powers through direct experience: seeing, hearing, tasting, smelling, touching, and movement.

American Montessori Society, *Introduction to Montessori* <http://www.amshq.org/Montessori%20Education/Introduction%20to%20Montessori.aspx> (accessed August 9, 2012).

16. Petitioner's teacher-employees hold Montessori teaching credentials from the American Montessori Society. The credentials include:

Name	Montessori Credential	Date Awarded
Merly S. Cronk	Associate Early Childhood Credential	May 1999
Karen E. King	Preprimary Credential	June 1978
Susan J. Murrell	Provisional Preprimary Credential	June 1990

17. There are only two institutions in Michigan that award Montessori early childhood credentials, Adrian Dominican Montessori Education Institute in Adrian, Michigan and Michigan Montessori Teacher Education Center in Rochester Hills, Michigan. To be awarded an early childhood credential from Adrian Dominican Montessori Education Institute, a trainee must pass a ten month course of study.

18. Petitioner is an affiliate of the Michigan Montessori Society and provides instruction to its students in conformance with the Montessori teaching method.

19. Petitioner is not accredited by the state of Michigan under the Revised School Code, MCL 380.1 *et seq*.

20. Petitioner's teacher-employees are not certificated by the state of Michigan under the Revised School Code, MCL 380.1 *et seq*.

21. Petitioner's current Admissions Policy states:

> Enrollment is open to children from the age of 18 months through kindergarten.
>
> Harmony Montessori Center does not discriminate on the basis of race, sex, color, religion, or national and ethnic origin in administration of its

> educational policies, admissions policies, and other school-administered programs.
>
> Harmony Montessori Center reserves the right to dismiss a student when, in the opinion of the administration, his/her interests or those of Harmony Montessori Center will best be served by such action.
>
> If a child leaves the program before the end of the school year, a 30 day notice must be given. At that time, the initial deposit may be used as the final payment.

The source of Petitioner's current Admissions Policy is Harmony Montessori Center, *Parent Handbook*, at 3-4. The *Parent Handbook* is attached to this *Stipulation* as Exhibit 1.

22. During the years in issue, Petitioner offered a Wobbler Program, Toddler Programs, Preschool Programs, and Kindergarten Programs. The Wobbler Program was divided into half-day and full-day programs; both the half-day and full-day programs were offered between two and five days per week. The Toddler Programs were divided into half-day and full-day programs; both the half-day and full-day programs were offered five days per week. The Preschool Programs were divided into half-day and full-day programs; both the half-day and full-day programs were offered five days per week. The Kindergarten Programs were divided into half-day and full-day programs; both the half-day and full-day programs were offered five days per week.

23. The number and age range of students participating in each program of the programs identified in Stipulation 23 are delineated in Table A, below. Petitioner has included and continues to include students who participate in the Preschool Program in some activities of the Kindergarten Program. Petitioner's teachers and the Preschool Program students' parents assess the students' development to determine the extent to which the students participate in the Kindergarten Program. The number of students who participate in both the Preschool Program and the Kindergarten Program are depicted in Table A as "(+ #)"

in the Kindergarten Program rows in Table A.

Table A			
Applicable School Year	**Program**	**Number of Students**	**Age Range**
2008-2009	Toddler	16	18 months – 3 years
	Preschool	22	2 ½ years – 6 years
	Kindergarten	2 (+3)	2 ½ years – 6 years
2009-2010	Toddler	16	18 months – 3 years
	Preschool	22	2 ½ years – 6 years
	Kindergarten	2 (+2)	2 ½ years – 6 years
2010-2011	Wobbler	4	12 months – 17 months
	Toddler	12	18 months – 3 years
	Preschool	20	2 ½ years – 6 years
	Kindergarten	4 (+2)	2 ½ years – 6 years
2011-2012	Toddler	14	18 months – 3 years
	Preschool	20	2 ½ years – 6 years
	Kindergarten	4 (+4)	2 ½ years – 6 years

24. Petitioner's Kindergarten curriculum includes five focus areas designed to teach students numerous skills, including language, math, handwriting, geography, science, and work habits.

25. Harmony's Preschool curriculum includes five focus areas designed to impart numerous underlying skills. They include practical life, sensorial, language, reading development, writing, math, and social development.

26. Petitioner charges tuition for participation in its programs, as delineated in Table B below:

Table B			
Applicable School Year	**Program**	**Type**	**Tuition Fee**
2008-2009	Toddler	All Day (7:30 – 6:00)	$46.50 per day
		Extended Day (8:30 – 3:00)	$40.00 per day
		Morning (9:00 – 11:30)	$22.50 per day
	Preschool and Kindergarten	All Day, No Nap (7:30 – 6:00)	$41.00 per day
		All Day, With Nap (7:30 – 6:00)	$38.00 per day
		Extended Day, No Nap (8:30 – 3:00)	$36.00 per day
2008-2009	Preschool and Kindergarten	Extended Day, With Nap (8:30 – 3:00)	$32.50 per day
2008-2009	Preschool and Kindergarten	Half Day, With Lunch (8:30 – 12:30)	$25.75 per day
		Morning (9:00 – 11:30)	$19.00 per day

Table B			
Applicable School Year	**Program**	**Type**	**Tuition Fee**
2009-2010	Toddler	All Day (7:30 – 6:00)	$8,820 annually or $49 per day
		Extended Day (8:30 – 3:00)	$7,560 annually or $42 per day
		Morning (9:00 – 11:30)	$4,320 annually or $24 per day
	Preschool and Kindergarten	All Day, No Nap (7:30 – 6:00)	$7,740 annually
		All Day, With Nap (7:30 – 6:00)	$7,020 annually
		Extended Day, No Nap (8:30 – 3:00) or (11:30 – 6:00)	$6,840 annually
		Extended Day, With Nap (8:30 – 3:00)	$6,030 annually
		Half Day, With Lunch (8:30 – 12:30)	$4,860 annually
		Morning (9:00 – 11:30) or Afternoon (1:00 – 3:30)	$3,600 annually
2010-2011	Wobbler	All Day (7:30 – 6:00)	$53.00 per day
		Extended Day (8:30 – 3:00)	$44.00 per day
		Half Day (8:30 – 12:30)	$34.00 per day
		Morning (9:00 – 11:30)	$24.00 per day
	Toddler	All Day (7:30 – 6:00)	$49.00 per day
		Extended Day (8:30 – 3:00)	$42.00 per day
		Half Day (8:30 – 12:30)	$31.00 per day
		Morning (9:00 – 11:30)	$24.00 per day
	Preschool and Kindergarten	All Day, No Nap (7:30 – 6:00)	$7,740 annually
		All Day, With Nap (7:30 – 6:00)	$7,020 annually
		Extended Day, No Nap (8:30 – 3:00) or (11:30 – 6:00)	$6,840 annually
		Extended Day, With Nap (8:30 – 3:00)	$6,030 annually
2010-2011	Preschool and Kindergarten	Half Day, With Lunch (8:30 – 12:30)	$4,860 annually
		Morning (9:00 – 11:30) or Afternoon (1:00 – 3:30)	$3,600 annually
2011-2012	Toddler	All Day (7:30 – 6:00)	$50.00 per day
		Extended Day (8:30 – 3:00)	$43.00 per day
		Half Day (8:30 – 12:30)	$32.00 per day
		Morning (9:00 – 11:30)	$25.00 per day
2011-2012	Preschool and Kindergarten	All Day, No Nap (7:30 – 6:00)	$7,830 annually
		All Day, With Nap (7:30 – 6:00)	$7,110 annually
		Extended Day, No Nap (8:30 – 3:00)	$6,930 annually

Table B			
Applicable School Year	**Program**	**Type**	**Tuition Fee**
		Extended Day, With Nap (8:30 – 3:00)	$6,120 annually
		Half Day, With Lunch (8:30 – 12:30)	$4,950 annually
		Morning (9:00 – 11:30)	$3,690 annually

27. During each of the years in issue, Petitioner provided instruction to between two and four Kindergarten students, as shown in Table C below:

Table C		
Applicable School Year	**Full-Day Kindergarten**	**Half-Day Kindergarten**
2008-2009	2	0
2009-2010	2	0
2010-2011	1	3
2011-2012	2	2

28. Table D below lists the ages of Kindergarten participants as of December 1 of each school year:

Applicable School Year	Age 4	Age 5	Age 6
2008-2009	0	1	1
2009-2010	2	0	0
2010-2011	0	4	0
2011-2012	0	4	0

29. As represented on their respective websites, other Montessori schools in Michigan charge varying amounts of tuition, as shown in Table E below:

Table E			
School	**Type of Program**	**Fee Charged**	**Applicable School Year (if available)**
Children's Place Montessori 32175 Folsom Rd. Farmington Hills, MI 48336	Full Day (open enrollment for children aged 3 – 6)	$8550 annually	2011-2012
	Extended Half-Day (6.5 hours, open enrollment for children aged 3 – 6)	$7362.50 annually	
	Half-Day (2.5 hours, open enrollment for children aged 3 – 6)	5177.50 annually	
First Friends Montessori	Half-Day Kindergarten	$4,000 annually	2012-2013

Table E			
School	**Type of Program**	**Fee Charged**	**Applicable School Year (if available)**
11100 W. St. Clair Romeo, MI 48065	All Day Kindergarten	$5,500 annually	
Montessori Center of Downriver 15575 Northline Rd. Southgate, MI 48195	Full day preschool or Kindergarten with Daycare	$764 monthly or $7,420 annually	Currently Advertised
	Full day preschool or Kindergarten without Daycare	$660 monthly or $6,306 annually	
	Half-day preschool or Kindergarten (9:00 – 11:30)	$350 monthly or $3,339 annually	
	Half-day preschool or Kindergarten (1:00 – 3:30)	$325 monthly or $3,150 annually	
	Toddler	7.5 hours per day: $727 monthly or $7,059.15 annually	
		8 hours per day: $776 monthly or $7,529.76 annually	
		9 hours per day: $873 monthly or $8,473 annually	

The sources for data shown in Table E are: Children's Place Montessori, *Tuition* < http://www.childrensplacemontessori.com/photo2.htm> (accessed August 7, 2012); First Friends Montessori, *Admissions* < http://www.firstfriendsmontessori.org/> (accessed August 7, 2012); and Montessori Center of Downriver, *Programs and Tuition* <http://www.montessoridownriver.com/programs.html> (accessed August 9, 2012).

30. Non-Montessori schools in Michigan charge varying amounts of tuition, as shown in Table F below:

Table F			
School	**Type of Program**	**Fee Charged**	**Applicable School Year (if available)**
Friends School in Detroit 1100 St. Aubin Detroit, MI 48207	Preschool	$7,700 annually	2011-2012
	Kindergarten	$9,9750 annually	

Table F			
School	**Type of Program**	**Fee Charged**	**Applicable School Year (if available)**
Happy Dino 375 Hamilton Row Birmingham, MI 48009	Preschool	$35 daily, $150 weekly, or $450 monthly	Currently Advertised
Sunflowers Christian Preschool 529 Hendrie Blvd. Royal Oak, MI 48067	Four-year old Preschool (33-weeks; three days per week; two hours, 45 minutes per day)	$1,515 annually (non-church members) or $1,023 annually (church members)	2011-2012
	Three-year old Preschool (33-weeks; two days per week; two hours, thirty minutes per day)	$1,023 annually (non-church members) or $920.70 annually (church members)	

The sources for data shown in Table F are: First Presbyterian Church of Royal Oak: Sunflowers Christian Preschool, *Registration Form* <http://www.fpcro.org/media/Sunflowers/Sunflowers%20Registration%20application%20form%20master.pdf> (accessed August 6, 2012); Friends School in Detroit, *Tuition Schedule 2011-2012* < http://www.friendsschool.org/Portals/0/forms/Tuition%20and%20Financial%20Aid%20Information%202011.2012%281%29.pdf > (accessed August 9, 2012); and Happy Dino, *Preschool* <http://happydinoplaycare.com/?page_id=11> (accessed August 6, 2012).

APPLICABLE LAW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions. TTR 111(4). In the instant case, both parties moved for summary disposition under MCR 2.116(C)(10).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no

genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

CONCLUSIONS OF LAW

The Tribunal has carefully considered the Motions for Summary Disposition, under the criteria for MCR 2.116(C)(10), and, based on the pleadings and other documentary evidence

filed with the Tribunal, determines that summary disposition in favor of Respondent is appropriate for the reasons stated herein.

Education exemption under MCL 211.7n

MCL 211.7n, provides:

> Real estate or personal property owned and occupied by nonprofit . . . educational . . . institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act.

In order to qualify for an exemption as an educational institution under MCL 211.7n, Petitioner must meet three criteria:

(1) The real estate must be owned and occupied by the exemption claimant;
(2) The exemption claimant must be a non profit **educational** institution**,** and
(3) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.[*] (Emphasis added).

Grosse Pointe Academy v Township of Grosse Pointe, unpublished opinion per curiam of the Court of Appeals, decided November 2, 2004 (Docket No. 248340), citing *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944).

The court in *Ladies Literary Club v City of Grand Rapids,* 409 Mich 748; 298 NW2d 422 (1980), specified two requirements that must be met in order for an organization to qualify for an educational exemption from taxation:

1. An institution seeking an educational exemption must fit into the general scheme of education provided by the state and supported by public taxation.
2. The institution must contribute substantially to the relief of the educational burden of government. *Id.* at 755-76; 298 NW2d at 426.

[*]The requirement that the claimant be incorporated under Michigan law is no longer valid, having been found to be unconstitutional as it denied equal protection to institutions registered out-of-state. *OCLC Online Computer Library Center, Inc v City of Battle Creek,* 224 Mich App 608, 612; 569 NW2d 676 (1997), citing *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp,* 186 Mich App 511, 515; 465 NW2d 14 (1990).

With regard to Petitioner's contention that it is a preschool that fits within the general scheme of education and substantially relieves the educational burden of government, *Association of Little Friends, Inc v City of Escanaba*, 138 Mich App 302; 360 NW2d 602 (1985), provides some assistance. In such case, a nonprofit day care center supplying day care to preschool children appealed the Tribunal's determination that it was not an educational institution. The court upheld the Tribunal's decision, stating:

> Our legislative scheme of education mandates neither **preschool education** nor vocational training, MCL § 380.1285; MSA § 15.41285; MCL § 380.1287; MSA § 15.41287. Although we recognize that the Association conducts educational activities of great benefit to the community, petitioner has not shown that its activities sufficiently relieve the government's educational burden to warrant the claimed educational institution exemption. (Emphasis added.) *Id.* at 308.

Petitioner has stated that the State Board of Education has implemented standards for infant and toddler programs and prekindergarten education. Petitioner's argument is that the Legislature has appropriated funding towards early education and this action puts pre-kindergarten education within the State's general scheme of education. Petitioner stated in its Motion that $88.1 million was appropriated for both the 2008-2009 and 2010-2011 tax years toward the Great Start Readiness Program. This program is not mandated under the Revised School Code. The funding and requirements for this program are contained in the State School Code Act, specifically MCL 388.1632d. The statute provides for part-day or full-day free programs designed to:

> (a) Improve the readiness and subsequent achievement of educationally disadvantaged children as defined by the department who will be at least 4, but less than 5 years of age, as of December 1 of the school year in which the programs are offered, and who meet the participant eligibility and prioritization guidelines as defined by the state board.

The Great Start Readiness Program is very specific and contains several requirements to be eligible for funding under MCL 388.1632d(4), including nutritional services, health and

development screening, referrals to social service agencies, and a school readiness advisory committee. There is nothing in the admitted exhibits and documentary evidence, affidavits, or Motions that would indicate that the Montessori program at issue includes, or is targeted in any way, to educationally disadvantaged children, or offers the services required under the Program. The fact that such a program exists does not establish that preschool is state mandated or otherwise negate the Court of Appeals holding in *Association of Little Friends.* The Tribunal finds that providing preschool *does not* fit into the scheme of education provided by the state and supported by public taxation. It therefore follows that Petitioner does not relieve any governmental, educational burden.

Notwithstanding the determination that preschool is not mandated by the State's scheme of education, *Association of Little Friends* is not entirely determinative in this case, as Petitioner also offers kindergarten classes, which were not specifically addressed by the Court of Appeals in that case. However, kindergarten was **not** mandated by the State of Michigan during the tax years at issue. The Revised School Code, MCL 380.1561(2), states that "[a] child becoming 6 years of age before December 1 shall be enrolled on the first day of the school year . . . ." There is no statutory provision requiring that children under age 6 attend school. Rather, MCL 380.1147(2) provides that "[in] a school district that provides kindergarten . . . a child who is a resident of the school district *may enroll* in the kindergarten if the child is at least 5 years of age on December 1 of the school year of enrollment." (Emphasis added). Enrollment in kindergarten is permissive, not compulsory, for children reaching 5 years of age by December 1 of the school year. For those school districts that do elect to provide kindergarten, the State provides a per-pupil foundation allowance for half-day or full-day attendance. *See* MCL 388.1606, 388.1701. The Tribunal finds that, like the preschool and vocational training

addressed in *Association of Little Friends*, Michigan's legislative scheme of education does not mandate kindergarten and Petitioner has failed to show that "its activities sufficiently relieve the government's educational burden to warrant the claimed educational institution exemption." *Id.* at 308.

Petitioner has failed to meet the first requirement under *Ladies Literary Club* and is therefore not entitled to the education exemption under MCL 211.7n. The Tribunal finds that Petitioner has also failed to meet the second requirement and has not established that it contributes **substantially** to the relief of the educational burden of government. As neither preschool nor kindergarten is mandated by the state, it is somewhat illogical that any programs Petitioner may have relative to preschool or kindergarten could provide "relief of the educational burden of government." The State, however, does expend funds to those school districts that offer kindergarten, and it is therefore possible that an "educational burden" results from this funding. Given this, and viewing the evidence in the light most favorable to Petitioner, the Tribunal finds that Petitioner has failed to establish that its programs contribute substantially to the relief of the State's burden in funding or offering kindergarten education. Petitioner has stipulated to the fact that it is not accredited under the Revised School Code and that its instructors are not certified by the State. (Joint Stipulation of Facts, #19 and #20). The test on whether a program contributes substantially to the relief of the burden of government was established in *Kendall Memorial School, supra*. Petitioner must show that if it was not in existence, would or could a substantial portion of the students attending Petitioner's program instead attend a state-supported school. Respondent's argument is that out of a total of 158 children over the four years at issue, only 12 were in the kindergarten program. (Respondent's Motion, p 6). Petitioner's response to this argument relates to its assertions that the preschool

program offered should be considered, since funding has been appropriated to the Great Start Readiness Program. The Tribunal has already analyzed this argument relative to the preschool program and has found that it would not apply. As indicated previously, kindergarten is permissive, but not mandatory, for those children who reach age 5 by December 1 of the school year. Accordingly, the students enrolled in Petitioner's preschool program, who may also be included in some of the kindergarten programs, could not attend kindergarten in the school districts in which it may be offered, unless they met the age requirement to enroll. Petitioner has indicated that 11 preschool students also participated in the kindergarten program. (Petitioner's Response, p 5). Assuming that these 11 children were 5 years old, the total number of students involved in Petitioner's kindergarten programs would be 23. The Tribunal does not find that 23 students out of a total of 158 represents a substantial portion of the students enrolled in the overall programs offered by Petitioner. The total number of enrollees in Petitioner's kindergarten program, per year, was five during 2008 - 2009, four during 2009 - 2010, six during 2010 - 2011, and eight during 2011 -2012. (Joint Stipulation #23). Further, Petitioner has failed to establish that these students would enroll in publicly funded kindergarten programs, or even that there was a kindergarten program in their school district that they could enroll in, if Petitioner's program was not in existence.

Charitable exemption under MCL 211.7o

MCL 211.7o(1) provides:

> 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.

With respect to the issue of the charitable exemption under MCL 211.7o, the Tribunal finds that Petitioner has failed to established that it is a "nonprofit charitable institution" within

the meaning of the statute and applicable case law. The Michigan standard for exemption is more rigorous than the federal standard: "the fact that a petitioner may qualify for tax exempt status under Federal law, i.e., Section 501(C)(3) of the Internal Revenue Code, creates no presumption in favor of an exemption from property taxes.' *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748), 752 (n 1) (1940)." See also *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968), which states: "The institute's exemption from Michigan ad valorem tax is not determinable by its qualification as an organization exempt from income tax under section 501(c)(3) of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act."

In *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), the Supreme Court presented the test for determining if an organization is a charitable one under MCL 211.7o (such is the same test for an educational exemption) and required that:

> (1) the real estate must be owned and occupied by the exemption claimant;
> (2) the exemption claimant must be a nonprofit **charitable** institution; and
> (3) the exemption exists only when the building and other property thereon are occupied by the claimant solely for the purpose for which it was incorporated. (Emphasis added.)

The first step in determining whether an organization is charitable is to understand the definition of "charity." The Michigan Supreme Court established the following definition of "charity":

> Charity is a **gift,** to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. *Retirement Homes, supra* at 348. (Emphasis added.)

In order to determine if the child care center is entitled to a property tax exemption under MCL 211.7o, Petitioner must prove by a preponderance of the evidence that it is a "charitable

institution." In this regard, the Michigan Supreme Court concluded that the "institution's activities as a whole must be examined." (See *Michigan United Conservation Clubs v Lansing Township*, 423 Mich 661; 378 NW2d 737 (1985) ("*MUCC*"), which held that "[t]he proper focus in this case is whether MUCC's activities, *taken as a whole*, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.") (Emphasis added.) *Id.* at 67. In *Michigan Baptist Homes and Development Company v City of Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976), the Michigan Supreme Court stated that "exempt status requires more than a mere showing that services are provided by a nonprofit corporation." *Id.* at 70. The Court also stated that to qualify for a charitable or benevolent exemption, the use of the property must ". . . benefit the general public without restriction." *Id.* at 671.

Whether an institution is a charitable institution is a fact-specific question that requires examining the claimant's overall purpose and the way in which it fulfills that purpose. In this regard, the Michigan Supreme Court held in *Wexford, supra,* that several factors must be considered in determining whether an entity is a charitable institution for purposes of MCL 211.7o:

(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.

Respondent is in agreement that Petitioner is a non-profit organization pursuant to factor (1), and Petitioner is incorporated as a domestic nonprofit corporation. (Respondent's Motion, p 10, Petitioner's Exhibit C).The parties have stipulated to the fact that Petitioner did not offer its services on a discriminatory basis, so factor (3) above is not disputed. Joint Stipulation of Facts, #11. In regard to factor (5), the parties stipulated to the fact that Petitioner's fees did not exceed the amount required to provide its services. (Joint Stipulation of Facts, #12). Despite this stipulated fact, Respondent contends that factor (5) is at issue. Respondent has acknowledged that Petitioner brings peoples' minds under the influence of education, and (4) is therefore not at issue. (Respondent's Motion, p 10). The analysis below discusses each of the contested factors under *Wexford* in regard to whether Petitioner is a charitable institution.

(2) Is Petitioner organized chiefly, if not solely, for charity?

Petitioner's Articles of Incorporation, filed June 18, 1998, state as Petitioner's main purpose "Education of pre-school children." (Respondent's Exhibit 1). The Amended Articles of Incorporation, filed August 9, 1999, state "Education and care of pre-school children" and also includes the standard 501(c)(3) language. (Respondent's Exhibit 1). There is no indication in the documentary evidence presented that Petitioner is organized *chiefly* for charity. Rather, Petitioner is organized and operates as a Montessori program for children ages 12 months to 6 years. (Joint Stipulation of Facts, #23, Petitioner's Motion, p 3). Petitioner does not provide its programs as a "gift . . . for the benefit of an indefinite number of persons" but rather charges tuition for the services provided. (Joint Stipulation of Facts, #26). The parties have stipulated that Petitioner "reduced or eliminated charges for students whose parents were unable to pay the full amount." (Joint Stipulation of Facts, #13, Petitioner's Exhibit A). Providing free or reduced

tuition to an undisclosed number of existing students does not support a finding that Petitioner is chiefly or solely organized for charity. Furthermore, in the affidavit of Anna Fast, Co-Director of Harmony Montessori, she states:

> We have no written policy to deal with instances where a parent cannot pay tuition. Harmony's Co-Directors, Ms. King and I, consider the circumstances case-by-case and make a decision about reduced or waived fees. We consider factors like if the parent has been laid off from his job, what the consequences to the student's development will be **if the student cannot continue**, and how much tuition is needed so that Harmony can keep its doors open. Petitioner's Exhibit A. (Emphasis added).

Ms. Fast's testimony appears to apply to existing Harmony students who experience financial difficulty. The Tribunal opines that Harmony does not offer free tuition to anyone who walks in the door like the health care center in *Wexford, supra*. In that case Wexford Medical Center "ha[d] a charity care program that offers free and reduced-cost medical care to the indigent with no restrictions. It operates under an open-access policy under which it **accepts any patient who walks through its doors.**" *Wexford, supra*, at 747. (Emphasis added). Harmony Montessori accepts students who can pay tuition with an undocumented, case-by-case reduction or waiver of fees in special circumstances when an enrolled student can no longer continue to pay tuition. The great weight of the evidence reflects that Petitioner was providing educational services in-line with the Montessori method, getting paid a market rate for its services, and not acting as a charitable institution for the tax years at issue.

(5) Does Petitioner charge no more than what is needed for its successful maintenance?

As noted above, the parties stipulated to the fact that Petitioner did not charge more than what was required to provide its services. Despite this stipulation, Respondent's Motion alleges that there is no evidence as to whether the tuition charged is tailored to Petitioner's costs and that

the tuition is comparable to the other Montessori centers referenced in the Joint Stipulation of Facts. (Respondent's Motion, p 12). The Tribunal finds that the fact that Petitioner may be charging similar market rates for tuition does not mean that it is charging more than what is needed for its successful maintenance. Petitioner's tax returns and profit and loss statements (Exhibits F and G) reflect that Petitioner is not operating at a profit; the expenses were greater than the revenue for tax years 2009 and 2011. The Tribunal finds this sufficient evidence to support a finding that Petitioner does not charge more than what is needed for its successful maintenance. Nevertheless, as Petitioner has failed to establish that it is organized chiefly for charity or that the overall nature is charitable, the Tribunal finds that Petitioner is not entitled to the exemption under MCL 211.7o.

(6) Is the overall nature of the institution charitable?

The analysis of this factor is much the same as for factor (2), discussed above. While Petitioner is not required to meet a specific monetary threshold for charity, its "overall nature" must be charitable. As previously discussed, the overall nature of Petitioner's activities is not charitable. Given this analysis, the Tribunal finds that Petitioner does not qualify for a charitable exemption under MCL 211.7o for the 2009, 2010, 2011, and 2012 tax years.

CONCLUSION

The Tribunal finds that Petitioner is not entitled to summary disposition in its favor. The affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties, when considered in the light most favorable to Petitioner, support a finding that Petitioner is not qualified to receive an exemption as an education institution under MCL 211.7n. Rather, the documentary evidence demonstrates that there is no genuine issue of material fact and summary disposition should be granted in favor of Respondent under MCR 2.116(C)(10).

The Tribunal further finds that there is no genuine issue of material fact in regard to entitlement of a charitable exemption. When viewed in the light most favorable to Petitioner, the evidence shows that Petitioner is not a nonprofit charitable institution and is not entitled to an exemption under MCL 211.7o. As such, summary disposition in favor of Respondent is appropriate.

JUDGMENT

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 Order granting Respondent's Motion for Summary Disposition resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: Sept. 26, 2012 By: Preeti P. Gadola