

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

Clinton Township Volunteers of America
Elderly Housing Inc.,
Petitioner,

v

MTT Docket No. 449250

Clinton Township,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

ORDER DISMISSING 2012, 2013, AND 2014 TAX YEARS

ORDER SEVERING APPEAL FOR 2015 TAX YEAR
AND ASSIGNING DOCKET NO. 14-007890

ORDER REQUIRING PETITIONER TO FILE PETITION IN DOCKET NO. 14-007890

INTRODUCTION

Petitioner, Clinton Township Volunteers of America Elderly Housing Inc., requests an exemption from taxation under MCL 211.7d for Parcel No. 16-11-05-100-059 for the 2012, 2013, and 2014 tax years¹, for property located at 17200 Dove Street, Clinton Township, Michigan.

It was originally determined that the Tribunal would render a decision based on the Stipulation of Facts and submitted briefs. Petitioner submitted its Brief on August 1, 2014; Petitioner submitted an Amended Brief on August 13, 2014. Respondent submitted its Response Brief on August 26, 2014. During a telephone conference between the Tribunal and the parties, it was stated that outstanding fact issues remained which require that the case go to hearing.

A hearing was then held on October 1, 2014. April E. Knoch, Attorney, represented Petitioner, and Timothy D. Tomlinson, Attorney, represented Respondent. Petitioner's

¹ Pursuant to MCL 205.737(5)(a), "...if the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from the appeal at the time of the hearing on the petition." In the instant case, such a request was not made. As such, tax years 2013 and 2014 are automatically added to this petition.

witnesses were Ulli Raak and Karlynn Tucker Scaggs. Respondent's witnesses were Carlo Santia and James Elrod.

Based on the submitted briefs, exhibits, testimony, and case file, the Tribunal finds that Petitioner's claim for an exemption under MCL 211.7d for the 2012, 2013, and 2014 tax years is dismissed, as further discussed below.

PETITIONER'S CONTENTIONS

Petitioner states that it submitted a timely application for exemption under MCL 211.7d to Respondent on March 1, 2012, but Respondent did not submit a written acceptance or denial to Petitioner or the Department of Treasury, contrary to what is required under MCL 211.7d(2). Petitioner argues that this same exemption application "was ultimately signed by Respondent on February 10, 2014, yet rather than submit to the State as required by statute, Respondent gave the original application to Petitioner's representative" Petitioner's Amended Brief at 9. Petitioner states that its legal counsel then submitted the form to appropriate Treasury personnel but on February 19, 2014, Petitioner was advised by Treasury that the application could not be approved because it was not completed or submitted by Respondent prior to December 31. Petitioner asserts that "Respondent has unlawfully withheld approval of Petitioner's exemption to the Petitioner's detriment. In fact, Respondent agrees now that Petitioner is exempt but refuses to stop taxing Petitioner." Petitioner's Amended Brief at 11.

Petitioner further argues that the statutory requirement for the assessor to submit its approval or denial in writing is obligatory, not permissive, and it further must be submitted prior to December 31 of the year of the application. Petitioner reiterates that Respondent never submitted anything to Petitioner or Treasury in writing, and even after Respondent was contacted in 2014, Respondent still failed to submit anything to Treasury.

PETITIONER'S ADMITTED EXHIBITS

- P-2 March 1, 2012 letter to Respondent requesting exemption
- P-3 Certificate of Occupancy dated January 19, 2012
- P-4 Property Information and Description
- P-5 Corrected Filing Endorsement of Articles of Incorporation, Articles of Incorporation, Certificate of Approval, Certificate of Amendment
- P-6 Firm Commitment for Capital Advance Financing
- P-7 Regulatory Agreement dated December 8, 2010
- P-8 202 PRAC Lease dated March 1, 2012

P-15 Certificate of Approval issued May 10, 2010 by Department of Planning and Community Development

PETITIONER'S WITNESSES

Ulli Raak

Ulli Raak, Petitioner's former CFO from April 2000 to February 2013, was Petitioner's first witness. She testified that she prepared the exemption application and filed it with the township in March of 2012. She stated that "I did talk to Mr. Elrod, at some point, on the phone. And he advised that he was unable to approve the application at that time verbally." TR at 16. She does not recall Mr. Elrod ever leaving a voicemail in the fall of 2012 regarding a new application. Ms. Raak testified that Mr. Elrod did not tell her Petitioner would need to resubmit an application and no written approval or denial of the application was received prior to the time she left the company in February of 2013. She further stated that she was never told by the assessor that Petitioner was not allowed to apply for the exemption or that Petitioner had waived its right to apply for the exemption.

Ms. Raak stated that a final certificate of occupancy was not submitted because the application was filed on March 1, 2012; she is not aware of when the final certificate of occupancy was issued. She did recall that the conversation with Mr. Elrod related to him being unable to approve the application because the building was not complete and could not be assessed at its full value.

Karlynn Tucker Scaggs

Karlynn Tucker Scaggs, Petitioner's vice president of housing, testified that she attended the meetings with the Clinton Township Planning Commission and Board of Trustees. She stated that it was not her understanding from those meetings that Petitioner would never be able to apply for the exemption as a condition of getting approval for development of the property. Her understanding was "that due to this property nature under the HUD 202 program that we would be making application to the State Treasurer to pay the Township an amount equal to the property taxes based on the assessed value." TR at 30. She further stated that the minutes from the February 1, 2010 meeting include a condition that Petitioner would not apply for an exemption but she believes this is misquoted because Petitioner's statement was that the taxes would be paid through the State Treasurer. Ms. Tucker Scaggs testified that HUD would not have allowed them to close on the purchase if there was a condition in place that Petitioner could

not apply for an exemption. She further stated that without the exemption, Petitioner could not afford to operate the property.

Ms. Tucker Scaggs testified that the May 10, 2010, certificate of approval does say that the owner are not to apply for a PILOT and she first saw this document after Petitioner received the first tax bill and warning that the taxes were delinquent. She indicated that the parcel ID number on the certificate of approval does not match the parcel number on the tax bill issued to Petitioner and that the last three digits are different. Ms. Tucker Scaggs indicated her understanding is that a PILOT, or payment in lieu of taxes, is different from the exemption at issue here, as a PILOT is usually based on a formula involving gross rent and utility costs that is “significantly lower than what the normal property taxes would be” but the exemption in Michigan “is a little better” because the Township is getting “something more closely mirrored to the property taxes.” TR at 54. She further stated that Petitioner is still liable for paying other administrative and city fees, and that all of this was explained to the Township at the meetings.

Ms. Tucker Scaggs indicated that she did not receive any messages from Respondent regarding the initial application for the exemption and she was never advised to re-submit the application or that it was incomplete. She testified that the final certificate of occupancy was issued in May of 2012, after the irrigation system was inspected.

RESPONDENT’S CONTENTIONS

Respondent contends that when Petitioner sought approval of the site plan and development, it was submitted to the Township Board of Trustees with the condition that Petitioner would not be eligible for a payment in lieu of taxes (“PILOT”). Respondent argues that MCL 211.7d provides that an owner may claim an exemption but the exemption is not mandatory and the Township was under the belief that Petitioner would not be applying for the exemption. Respondent alleges that it is contrary to contract principles and a fraud for Petitioner to now attempt to seek an exemption that it stated in the development plan it would not ask for. Respondent argues that its agreement to release Petitioner from this condition for 2015 has no effect on the agreement in place not to seek the exemption for 2013 or 2014.

Respondent further contends that Petitioner is seeking an exemption for 2012 when the December 31, 2011 deadline had already expired. Respondent asserts that instead of issuing a denial, the assessor advised Petitioner’s representative that Petitioner’s application should be re-submitted in the fall of 2012 following a full assessment of the property and a final certificate of

occupancy. Respondent asserts that the evidence shows Petitioner failed to resubmit an application prior to the end of 2012 and instead filed an appeal with the Tribunal attempting to appeal the 2012 tax year.

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Valuation Disclosure
- R-5 February 4, 2010 letter Re: Site Development Approval
- R-6 Clinton Township Planning Commission, Report of Meeting dated October 8, 2009
- R-7 Excerpt from Clinton Township Regular Meeting of Board of Trustees dated February 1, 2010

RESPONDENT'S WITNESSES

Carlo Santia

Carlo Santia, director of planning and community development for Clinton Township, was Respondent's first witness. Mr. Santia testified that he dealt with Ms. Tucker Scaggs, the architect, James Pappas, and Alex Brodrick. He stated that this project went before the Planning Commission but that there was also an informational hearing with the residents of the subdivision because of the size of the project and the impact to the area. He testified that "it was made clear that the community did not want a [PILOT]." TR at 61. He stated that the additional conditions on approval of the project were not placed by the Planning Commission but by the Township Board. He indicated that both the February 1, 2010 meeting minutes and February 4, 2010 letter to Mr. Pappas reflect the condition that Petitioner would not apply for a PILOT but would be treated in the same manner for taxes as any other property. He testified that his understanding was that Petitioner would never apply for a traditional PILOT but he did not know at the time and still does not know exactly what the elderly housing exemption is. He further stated that it was his understanding and the understanding of the Planning Commission that the full taxes would be paid on the property "[i]rrespective of who they were paid by." TR at 64.

James Elrod

James Elrod, assessor for Clinton Township, testified that he contacted Ms. Raak after he received the application in March of 2012 and explained that he could not act on the application because it was not submitted by December 31 of 2011 to get the exemption for 2012, Petitioner had not taken occupancy of the property until March 1, and the property was not completed and fully assessed. He stated that the property was first fully assessed as of December 31, 2012, for the 2013 tax year. His recollection is that the final certificate of occupancy was dated May 16 or

May 19 of 2012. He further stated that he left another voicemail for Ms. Raak stating that he needed a completed application but he never heard back from her. He testified that he did not issue anything to Petitioner in writing regarding the application for the exemption. He stated that the application submitted by Petitioner is a request for a new senior citizens/disabled housing tax exemption and it is not for a traditional PILOT.

Mr. Elrod testified that he did not submit the paperwork to the Department of Treasury because the submitted application was not complete. He stated that he received the final certificate of occupancy from Petitioner sometime in 2013 after this appeal was filed with the Tribunal. He further stated that if approved by the Department of Treasury, 2015 would be the first year Petitioner would qualify for the exemption.

STIPULATED FACTS²

1. Petitioner is a Michigan non-profit charitable corporation that owns, operates and occupies the subject property for elderly housing at 17200 Dove Street, Clinton Township, Michigan.
2. The property identification number is 16-11-05-100-059 and the property is classified as RMH.
3. Petitioner's property has been operated since March 1, 2012, to provide occupancy for use of elderly affordable housing per Section 202 of the Housing Act of 1959, in accordance with its Articles of Incorporation and HUD Regulatory Agreement dated December 8, 2010.
4. The property is located in Macomb County and the Chippewa Valley school district.
5. On or about March 1, 2012, Petitioner submitted an application for exemption to the Clinton Township Assessor's Office requesting tax exemption in accordance with MCL 211.7d as part of Petitioner's application for a P.I.L.O.T.
6. Petitioner obtained a certificate of occupancy dated January 19, 2012.
7. That the initial move-in date for Petitioner's first occupant was March 1, 2012.
8. MCL 211.7d is the operative statutory provision for purposes of this appeal.

² Stipulated Facts filed by the parties on August 1, 2014

9. On or about July 24, 2014,³ Respondent approved and signed another tax exemption application for Petitioner based on the same certificate of occupancy and same initial move-in date.

In addition to the parties' Stipulated Facts, the Tribunal makes the following Findings of Fact:

1. The February 1, 2010 minutes from the Township Board of Trustees meeting states that there was a "discussion at the Planning Commission level with regard to the petitioner's agreement that they will be paying taxes and will not be applying for a pilot." See R-7.
2. On May 10, 2010, the Township Department of Planning and Community Development issued a certificate of approval to Petitioner for parcel 16-11-05-100-048. Condition #6 of the certificate of approval states "Property taxes for the subject site will be paid, and neither the current owner nor any future owners are to apply for a 'PILOT' for this development." See R-1 at 9.
3. Petitioner obtained a certificate of occupancy on January 19, 2012, which stated it was temporary until July 1, 2012. See P-3.
4. The parties did not provide the final certificate of occupancy to the Tribunal. Testimony reflects the final certificate of occupancy was obtained sometime in May of 2012.
5. The subject property was completed and fully assessed beginning December 31, 2012, for the 2013 tax year.
6. On February 24, 2014, the Department of Treasury sent a letter to Petitioner indicating it was unable to process Petitioner's enrollment in the Senior Citizen/Disabled Housing tax exemption program and that the request was denied. See R-1 at 8.

CONCLUSIONS OF LAW

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported "by competent, material, and substantial evidence." *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Jones & Laughlin Steel Corp, supra at 352-353*.

³ While the parties' Stipulated Facts state that Respondent approved an application on July 24, 2014, this application was not submitted as evidence by the parties.

“In general, tax exempt statutes must be strictly construed in favor of the taxing authority.” *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); see also *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753; 298 NW2d 422 (1980). The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption. See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

Respondent asserts, and much of the testimony focused on, the condition in the certificate of approval issued May 10, 2010, that Petitioner would not apply for a PILOT for the subject property. Respondent contends that because of this condition for approval of the project, Petitioner was precluded from seeking an exemption. Petitioner has not, however, requested a PILOT, which according to the Department of Treasury’s website, “is an agreement between a municipality and a property owner (private or public) to pay a service fee instead of property taxes Often, Service Fee/PILOT housing is low income or senior citizen housing that can include an apartment or the rental of a single family home.”⁴ Rather, Petitioner contends that it is entitled to an exemption under MCL 211.7d, which states in relevant part:

- (1) Housing owned and operated by a nonprofit corporation or association, by a limited dividend housing corporation, or by this state, a political subdivision of this state, or an instrumentality of this state, for occupancy or use solely by elderly or disabled families is exempt from the collection of taxes under this act. For purposes of this section, housing is considered occupied solely by elderly or disabled families even if 1 or more of the units is occupied by service personnel, such as a custodian or nurse.
- (2) An owner of property may claim an exemption under this section on a form prescribed by the department of treasury. The assessor of the local tax collecting unit in which the property is located shall approve or disapprove a claim for exemption under this section. **The assessor shall notify the owner and the department of treasury in writing of the exemption's approval or disapproval.** The department of treasury may deny an exemption under this section **An exemption under this section begins on December 31 of the year in which the exemption is approved** under this subsection and shall continue until the property is no longer used for occupancy or use solely by elderly or disabled families. The owner of property exempt under this section shall notify the local tax collecting unit in which the property is located and the department of treasury of any change in the property that would affect the exemption under this section. [Emphasis added.]

⁴ <<http://www.michigan.gov/taxes/0,4676,7-238-43715-154033--F,00.html>> (accessed November 12, 2014)

Respondent further states that it “is not under any obligation [under MCL 211.7d.]” Respondent’s Brief at 3. This assertion is untrue, as MCL 211.7d states that the owner may claim the exemption and the assessor **shall** approve or disapprove the exemption and **shall** notify the owner and the Department of Treasury **in writing** of the approval or disapproval. The language of the statute clearly evidences an obligation on the part of Respondent to approve or disapprove the exemption and to issue notification in writing of its decision. The language of the statute, however, does not require or otherwise provide that the deadline for the filing, approval or disapproval of an application is by December 31. Rather, MCL 211.7d specifically and clearly indicates that the exemption “begins on December 31 of the year in which the exemption is approved.” Given the lack of a response deadline in the statute for approval or denial of the exemption, the Tribunal must determine whether it has any authority over Petitioner’s claim for an exemption for the 2012, 2013, and 2014 tax years.

The Tribunal finds that regardless of the timely issuance of a written approval or denial by the assessor, Petitioner would not be entitled to an exemption for the 2012 tax year, as the application was not even submitted until March 1, 2012. In order to receive an exemption for the 2012 tax year, an application would need to have been submitted *and approved by the assessor* by December 31, 2011. Petitioner’s Amended Brief makes no mention of entitlement to an exemption for 2012; Petitioner’s arguments relate to the 2013 tax year going forward. Further, Petitioner’s representative conceded during the hearing that Petitioner could not get an exemption in 2012 because the application would have needed to be submitted in 2011 and the claim for an exemption for 2012 was withdrawn. TR at 80.

While Petitioner is not entitled to an exemption for the 2012 tax year, the application submitted March 1, 2012, could have been considered by Respondent for the 2013 tax year, as Respondent had sufficient opportunity to review the application and issue its written approval or denial by December 31, 2012. Respondent did not, however, issue a written approval or denial of the exemption by December 31, 2012. Although the application was submitted in early 2012, Respondent did not take any written action on the application until sometime in 2014. Respondent asserts that no action was taken because the submitted application was incomplete as only the temporary certificate of occupancy was submitted. According to James Elrod, the assessor, Petitioner was advised in early 2012 that the final certificate of occupancy was needed for the application to be complete; Ulli Raak further testified that she had a phone conversation

with the assessor “[a]nd he advised that he was unable to approve the application at that time” TR at 16. Petitioner, therefore, had notice and sufficient opportunity to submit a completed application prior to December 31, 2012. There is nothing in the record, however, that reflects that Petitioner ever provided a final certificate of occupancy to Respondent by December 31, 2012. Instead, Petitioner filed an appeal with the Tribunal, attempting to claim entitlement to the exemption for the 2012 tax year. The failure to provide the necessary documentation is justification for Respondent taking no further action after the phone conversation with Ulli Raak.

Regardless of any verbal conversation that may have occurred, the statute specifically requires Respondent to submit its approval or denial *in writing* to the taxpayer and the Department of Treasury. As Respondent deemed the application to be incomplete, there was no written approval or denial issued by Respondent by December 31, 2012, which would be the deadline for entitlement to the exemption beginning with the 2013 tax year. In order for the Tribunal to obtain jurisdiction over an appeal, MCL 205.725a provides “the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination.” See also MCL 205.731(a)⁵. There was no final decision, ruling, or determination issued by Respondent at the time of filing of this appeal on December 14, 2012. The Petition at #7, states “[t]he Respondent has failed to provide Petitioner with a written response as denial or approval of the exemption application status necessitating the filing of this appeal **in order to preserve Petitioner’s rights** for application of MCL 211.7d beginning December of tax year 2012.” [Emphasis added.] The Tribunal finds that the exemption cannot be granted for 2013, as no written approval or denial exists. Absent the written approval, the statute does not provide for a means to receive the exemption for the 2013 tax year. The statute specifically provides that the exemption begins December 31 of the year approved. This language is not ambiguous and is not subject to further interpretation by the Tribunal. The Michigan Supreme Court has stated:

When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature. To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial

⁵ “The tribunal has exclusive and original jurisdiction over all of the following: (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state.”

construction is permitted. *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013).

The Tribunal further finds that Petitioner did not submit a new application, with all necessary documentation, during the 2013 tax year. Petitioner submitted its only claim for the exemption to the Assessor on March 1, 2012 (which was incomplete, as stated above), and the Assessor approved that claim sometime in early 2014. As a result, Petitioner would be entitled to an exemption beginning December 31, 2014 for the 2015 tax year. However, the Department of Treasury issued a response to the approved application on February 24, 2014, correctly stating that “the first payment in lieu of taxes the facility would be eligible for is for tax year 2015.” R-1 at 8. The Department of Treasury, however, denied the exemption based on “the above described deficiencies.” *Id.* The Department’s letter indicated that it needs to be in receipt of Form 4736 and copies of current tax bills by December 1, 2015. While it is unclear how the denial of the exemption was issued based on the occurrence or non-occurrence of a future event, i.e. receipt of Form 4736 and tax bills by December 1, 2015, the Department of Treasury is the entity that issued the denial and it is not a party to this action. As such, the Tribunal can take no action to affirm Respondent’s approval of the exemption beginning December 31, 2014, as MCL 211.7d expressly provides that the Department of Treasury may deny the approved exemption once submitted. The Tribunal finds that the issue of whether Petitioner is entitled to an exemption as of December 31, 2014, for the 2015 tax year must be severed from this appeal, with the Department of Treasury added as the proper Respondent as it was the entity that issued the denial.

JUDGMENT

IT IS ORDERED that Petitioner’s appeal requesting an exemption under MCL 211.7d for the 2012, 2013, and 2014 tax years is DISMISSED.

IT IS FURTHER ORDERED that the denial of the exemption by the Department of Treasury for the 2015 tax year shall be SEVERED from this appeal and assigned Docket No. 14-007890.

IT IS FURTHER ORDERED that Petitioner shall, within 21 days of this Final Opinion and Judgment, file and serve a Petition in Docket No. 14-007890 addressing the denial of the exemption for the 2015 tax year by the Department of Treasury.

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

By: Victoria L. Enyart

Entered: Nov 14, 2014