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

Goodwill Industries of Greater Grand Rapids, Inc,
Petitioner,

v

MTT Docket No. 14-005351

Alpine Township,
Respondent.

Tribunal Judge Presiding
Steven H Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Goodwill Industries of Greater Grand Rapids, Inc., appeals the Respondent, Township of Alpine's denial of its claim for exemption from ad valorem property taxation under MCL 211.7o and/or MCL 211.9(1)(a) for the 2014, 2015 and 2016 tax years. A hearing was held in the matter on June 13, 2016. Nevin A. Rose and Claudia L. Rose, attorneys, appeared on behalf of Petitioner. Crystal L. Morgan, attorney, appeared on behalf of Respondent. Petitioner presented testimony from Robert Scott Dillard, Chief Financial Officer and Chief Operating Officer of Petitioner. Respondent did not present any witnesses.

Upon Order of the Tribunal dated June 13, 2016, both parties presented Post-Hearing Briefs addressing the following issues:

1. Does the subject property qualify for exemption pursuant to MCL 211.7o and/or MCL 211.9(1)(a)?
2. On April 1, 2016, the Michigan Supreme Court entered an order in *Baruch SLS, Inc v Tittabawasee Twp,* ____Mich ___; ___NW2d ___(2016) (Docket 152407) requiring the parties to file supplemental briefs addressing several issues associated with their decision in *Wexford Medical Group v City of Cadillac,* 474 Mich 192 (2006). Does the Supreme Court's order in *Baruch* necessitate placing the subject appeal in abeyance pending resolution of the *Baruch* case?

SUMMARY OF JUDGMENT

The subject property shall be granted an exemption under MCL 211.7o for the 2014, 2015, and 2016 tax years. The property's taxable value ("TV") for the tax years at issue shall be as follows:

Parcel Number: 41-09-23-480-601

Year	TV
2014	$0

2015	$0
2016	$0

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is entitled to exemption from ad valorem property taxation for the 2014, 2015 and 2016 tax years pursuant to the charitable exemption set forth in MCL 211.7o and/or MCL 211.9(1)a.[1] Specifically, Petitioner contends that (i) there is no evidence in the record that Petitioner discriminates when selecting the beneficiaries of its services and, therefore, there is no reason to place this case in abeyance pending a final decision by the Michigan Supreme Court in *Baruch SLS Inc v Tittabawassee Twp,* (ii) the subject property is a building owned by Petitioner on land leased pursuant to a Land Lease and Option to Purchase dated September 23, 2003, (iii) in 2016, Petitioner sold the subject building to the lessor of the land upon which the building was constructed, (iv) the subject property is occupied by Petitioner for the purpose for which it was organized, (v) Petitioner is a non-profit corporation incorporated in the State of Michigan, (vi) Petitioner was granted section 501(c)(3) exemption status under the Internal Revenue Code, (vii) Petitioner was granted section 509(a)(2) status as a public charity under the Internal Revenue Code, (viii) approximately 71% of the funds necessary to provide Petitioner's program services are generated by retail stores such as the subject, and (ix) Petitioner is a "charitable entity" pursuant to *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d. 734 (2006).

PETITIONER'S ADMITTED EXHIBITS

P-1: Resume of R. Scott Dillard
P-2: Goodwill Industries 2013 Annual Report
P-3: Goodwill Industries 2014 Annual Report
P-4: Goodwill Industries 2015 Annual Report
P-5: Goodwill Industries Consolidated Financial Statement December 31, 2012 and December 31, 2013
P-6: Goodwill Industries Consolidated Financial Statement December 31, 2014 and December 31, 2015
P-7: Rehmann Independent Auditors Report dated March 20, 2015
P-8: Restated Articles of Incorporation filed April 22, 1987
P-9: Letter from IRS dated October 17, 1966 regarding 501(c)(3) exemption

[1] On October 1, 2014, Petitioner filed a Motion to Amend Petition claiming exemption of the subject property pursuant to both MCL 211.7o and MCL 211.9(1)(a). The Tribunal granted Petitioner's Motion on November 3, 2014. Although Respondent's objection to Petitioner's claim under MCL 211.9(1)(a) is moot for the reasons discussed below, it is also untimely and improper. Even assuming Petitioner failed to serve Respondent's authorized representative with its Motion to Amend, thereby depriving Respondent of a meaningful opportunity to respond as it contends in its Post Hearing Brief, it could have filed a motion requesting reconsideration of the November 3, 2014 Order. It failed to do so, and waited until the day of the hearing to raise this issue for the first time. The oral motion fails to comply with TTR 225(1), which states that "[a]ll requests to the tribunal requiring an order in a proceeding shall be made *by written motion filed with the clerk and accompanied by the appropriate fee*, unless otherwise provided by the tribunal." (emphasis added). Further, while the Motion to Amend did not reference MCL 211.9(1)(a), the amended petition did.

P-10: Letter from IRS dated March 9, 2006 declaring Petitioner a Public Charity under IRS 509(a)(2)
P-12: State of Michigan Non-Profit Corporation Annual Report for 2015
P-13: Land Lease and Option to Purchase dated September 23, 2003
P-15: Purchase Agreement dated February 2, 2016; closing documents dated March 17, 2016

PETITIONER'S WITNESSES

R. Scott Dillard

R. Scott Dillard, CPA, is Petitioner's Chief Financial Officer and Chief Operating Officer. Mr. Dillard testified that (i) Petitioner is a non-profit corporation organized in the State of Michigan, (ii) Petitioner is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, (iii) Petitioner is classified as a public charity under section 509(a)(2) of the Internal Revenue Code, (iv) Petitioner operates approximately 20 retail stores including the subject property, (v) Petitioner receives donations of goods from the public which are then sold by Petitioner at the subject property, (vi) proceeds from the sale of goods at Petitioner's retail stores are used to train individuals with "a barrier to employment" for full-time employment, (vii) the services offered by Petitioner are not discriminatory, (viii) the subject building was erected in 2003 or 2004 by Petitioner and is located on leased land, (ix) Petitioner's lease of the land was signed in 2003 and had a 50 year term, (x) Petitioner owned the subject building from its construction until 2016, when it sold the building to the owner of the land, (xi) the training of individuals for further employment is typically not conducted at the subject property or other retail stores, but is conducted at Petitioner's employment center, which is equipped with classrooms and computers, and (xii) employees at the subject property may or may not be individuals with disabilities.

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is not entitled to exemption from ad valorem property taxation for the tax years at issue pursuant to the charitable exemptions set forth in MCL 211.7o or MCL 211.9(1)a. Specifically, Respondent contends that (i) the subject property is not exempt from ad valorem taxation under MCL 211.7o because (a) Petitioner did not prove that it owned the subject property on the respective dates of assessment at issue in this appeal, (b) Petitioner is not a charitable institution, (c) Petitioner's use of the subject property does not lessen the burdens of government, (d) the subject property is not used by Petitioner solely for the charitable purposes for which it was incorporated, and (e) the subject property is used to generate a profit, and (ii) the subject property is not exempt from ad valorem taxation under MCL 211.9(1)(a) because (a) Petitioner did not properly plead exemption under MCL 211.9(1)(a), (b) MCL 211.7o is the more specific statute and should control, and (c) the subject property fails to satisfy the factors established by the Michigan Supreme Court in *Wexford.*

RESPONDENT'S ADMITTED EXHIBITS

R-1: 2014 Property Record Card for subject property
R-2: 2015 Property Record Card for subject property
R-3: 2016 Property Record Card for subject property

R-4: Exterior Photographs of subject property
R-5: Interior Photographs of subject property
R-6: Sketch of subject property
R-7: March 17, 2014 letter enclosing Application for Exemption
R-8: Lease Agreement
R-9: Goodwill Industries of Grand Rapids, Inc. 2014 Form 990 with schedules

RESPONDENT'S WITNESSES

Respondent did not offer any witnesses in this matter.

FINDINGS OF FACT

1. The subject property is located at 5371 Alpine Ave NW, Alpine Township, Kent County, Michigan, and is identified as Parcel No. 41-09-23-480-601.
2. The subject property is a 12,000 SF commercial building with land improvements located on leased land, and therefore, classified as commercial personal property.
3. The subject property has a drop-off center for donations, a loading dock, production area, and dressing rooms, as well as other personal property necessary for retail operations.
4. The subject property is one of approximately 20 retail stores operated by Petitioner in eight counties in Michigan.
5. The subject property was sold to RG Homes, Inc., the owner of the land, in 2016.
6. The subject property's taxable values for the 2014, 2015 and 2016 tax years were $330,500, $328,200, and $329,184, respectively.
7. Petitioner is a tax exempt organization under section 501(c)(3) of the Internal Revenue Code.
8. Petitioner is a public charity under section 509(a)(2) of the Internal Revenue Code.

APPLICABLE LAW

Pursuant to MCL 211.7o(1), "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."[2] "The personal property of charitable, educational, and scientific institutions" is also exempt from taxation under MCL 211.9(1)(a).[3]

MCL 211.8(d) states, "For taxes levied after December 31, 2001, buildings and improvements . . . assessable under subdivision (h) and located on leased real property shall be assessed as personal property."[4] This section provides as follows:

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[2] *Id.*
[3] "The requirement that to be tax-exempt, an institution be incorporated within the state has been found to be unconstitutional." *Michigan Co-Tenancy Lab/Trinity Health v Michigan Pittsfield Charter Twp*, unpublished opinion per curiam of the Court of Appeals issued November 14, 2013 (Docket No. 310376), citing *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 203 n 5; 713 NW2d 734 (2006).
[4] MCL 211.8(d).

> During the tenancy of a lessee, leasehold improvements and structures installed and constructed on real property by the lessee, provided and to the extent the improvements or structures add to the true cash taxable value of the real property notwithstanding that the real property is encumbered by a lease agreement, and the value added by the improvements or structures is not otherwise included in the assessment of the real property . . . .[5]

CONCLUSIONS OF LAW

The General Property Tax Act provides that "all property . . . within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."[6] There is no dispute that the subject property, but for any exemption afforded, is subject to ad valorem taxation.[7] Exemption statutes are subject to a rule of strict construction in favor of the taxing authority.[8] The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption.[9] Nevertheless, tax exemption statutes are to be interpreted according to ordinary rules of statutory construction.[10] "[T]he preponderance of the evidence standard applies when a petitioner attempts to establish membership in an already exempt class."[11] Nonprofit religious and educational organizations, nonprofit charitable institutions, parsonages, and houses of public worship have all been recognized as exempt classes.[12]

Petitioner contends that the subject property is exempt from ad valorem property taxation because Petitioner qualifies as a charitable institution under MCL 211.9(1)(a) and MCL 211.7o. Petitioner relies primarily on the former, noting that the critical difference between the statutes is that MCL 211.9(1)(a) requires only ownership, while MCL 211.7o also requires occupancy for the purpose for which the institution was incorporated. The Tribunal finds, however, that MCL 211.9(1)(a) must be read in conjunction with MCL 211.7o. Both statutes relate to an exemption for the personal property of a charitable institution, and because the statutes share a common purpose, they are in pari materia. This argument is supported by Michigan case law. Specifically, the Michigan Supreme Court has held:

> Statutes in pari materia are those which relate to the same person or thing, or to the same class of persons or things, or which have a common purpose; and although an act may incidentally refer to the same subject as another act, it is not in pari materia if its scope and aim are distinct and unconnected. It is a well-established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together

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[5] MCL 211.8(h).
[6] See MCL 211.1.
[7] See *Michigan Bell Telephone Company v Dep't of Treasury*, 229 Mich App 200; 582 NW2d 770 (1998).
[8] See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661; 378 NW2d 737 (1985) and *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 MW2d 422 (1980).
[9] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).
[10] See *Inter Cooperative Council v Dep't of Treasury*, 257 Mich App 219; 668 NW2d 181 (2003).
[11] *ProMed Healthcare*, 249 Mich App at 494-495.
[12] See Article 9, Section 4 of the Michigan Constitution; MCL 211.7o; and MCL 211.7s.

> constituting one law, although they were enacted at different times, and contain no reference to one another.[13]

The Supreme Court has also held that "statutes in pari materia are to be taken together in ascertaining the intention of the legislature, and that courts will regard all statutes upon the same general subject-matter as part of one system."[14] In determining which statute should be controlling, the Court of Appeals has held:

> Where two statutes are in pari materia and one is specific to the subject matter while the other is only generally applicable, the specific statute, which is treated as an exception to the general one, prevails. This rule is particularly persuasive when one statute is both more specific and more recent.[15]

The Court of Appeals has further stated that "[i]f the two statutes appear to conflict . . . a newer statute prevails over the older. This is because the Legislature is presumed to be aware of, and thus to have considered the effect on, all existing statutes when enacting new laws."[16] This is true even if the statutes contain no reference to one another.[17] MCL 211.9(1)(a) was first enacted in 1893, while MCL 211.7o was enacted in 1980. MCL 211.7o is the more recent and more specific of the two. MCL 211.7o therefore prevails over MCL 211.9(1)(a) in determining whether the subject personal property is exempt from taxation.[18]

MCL 211.7o provides an exemption from ad valorem taxation if Petitioner can show that the property under appeal was "owned and occupied by a nonprofit charitable institution solely for the purposes for which it was incorporated . . ."[19] In *Liberty Hill Housing Corp v City of Livonia*, the Michigan Supreme Court set a three factor test that guides the exemption analysis under MCL 211.7o: "(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

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[13] *Palmer v State Land Office Bd*, 304 Mich 628, 636-637; 8 NW2d 664 (1943).
[14] *Dearborn Twp Clerk v Jones*, 335 Mich 658, 662; 57 NW2d 40 (1953).
[15] *Hill v Dep't of Treasury*, 202 Mich App 700, 704; 509 NW2d 905 (1993)(citations omitted). See also *Parise v Detroit Entertainment, LLC*, 295 Mich App 25; 811 NW2d 98 (2011).
[16] *People v Bragg*, 296 Mich App 433, 451; 824 NW2d 170 (2012).
[17] See *Maple Grove Twp v Misteguay Creek Intercounty Drain Bd*, 298 Mich App 200; 828 NW2d 459 (2012).
[18] The Tribunal notes that the Michigan Court of Appeals rejected a similar finding in *SBC Health Midwest, Inc v City of Kentwood*, unpublished opinion per curiam of the Court of Appeals issued March 19, 2015 (Docket No. 319428). Pursuant to MCR 7.215(C)(1), however, that decision is not precedentially binding. Moreover, the facts of that case are distinguishable from the instant appeal, as the personal property at issue in this case is the type that can be physically occupied. Indeed, but for its location on leased land, the subject building would be assessed as real property under the GPTA. Consequently, while MCL 211.9(1)(a) appears on its face to be unambiguous, it sets forth an entirely different test under the facts of this case, and conflicts with MCL 211.7o. It is therefore necessary to find a harmonious construction of the statutes, and the Michigan Supreme Court has held that " '[s]tatutes *in pari materia*, although in apparent conflict, should, so far as reasonably possible, be construed in harmony with each other, so as to give force and effect to each . . . .' " *Int'l Bus Machines Corp v Dep't of Treasury*, 496 Mich 642, 652; 852 NW2d 865, 872 (2014) (citation omitted).
[19] *Id.*

exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated."[20]

Petitioner has provided sufficient evidence to show by a preponderance of the evidence that it both owns and occupies the property within the meaning of MCL 211.7o. In order to occupy the property, the entity moving for the exemption must "at a minimum have a regular physical presence on the property."[21] Furthermore, "[t]he term occupy requires more than merely having the right to occupy . . . the charitable institution must actually occupy the property, i.e., maintain a regular physical presence there."[22]

Respondent contends that Petitioner is not an owner of the property because under the terms of the lease, (1) Petitioner did not have an option to renew the lease; (2) Petitioner was limited to using the building for "commercial purposes for the collection and sale of donated goods at retail" and the lessor had the right to allow or disallow any conduct or operation on the leased land; (3) the lessor retained the right to market the building; Petitioner was prohibited from making material changes to the exterior without the lessor's prior written approval; (4) title to the building improvements vested in the lessor upon termination of the lease, including upon default, without any compensation; and (5) Petitioner was generally prohibited from subleasing the building or allowing any other entity or person to occupy any portion of the property without the lessor's approval. In short, Respondent contends that because the lease contained several restrictions on Petitioner's use of the building, obligated Petitioner to leave the improvements on the premises at the end of the lease term, and vested title in the lessor without any consideration, it would be reasonable to conclude that Petitioner's interest in the building was for the lease term only and that its rights to the improved land were substantially similar to the rights a lessee would normally have under the terms of a lease agreement. The Tribunal agrees. This does not support a finding that the lessor is the owner of the building for purposes of this appeal as Respondent contends, however. The Land Lease Agreement was in effect during the tax years at issue, and as noted by Petitioner, it specifically states that "the building shall remain the property of Lessee until expiration or earlier termination of the lease." Further undermining Respondent's argument is the fact that Petitioner sold the building to the lessor for $1,100,000 in 2016.

Petitioner must next prove that it is a "nonprofit charitable institution."[23] Petitioner contends that it is a nonprofit institution because it is incorporated under Michigan law, and it is a 501(c)(3) charitable institution. Also noted was the fact that Petitioner is a public charity under section 509(a)(2) of the Internal Revenue Code. The fact that Petitioner is exempt from taxation under federal law is not a determinative factor in this case, however, as the Michigan standard for a charitable exemption is more rigorous than the federal standard. The fact that a petitioner may qualify as a tax exempt entity 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.[24]

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[20] *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 50; 746 NW2d 282 (2008).
[21] *Liberty Hill Housing Corp*, 480 Mich at 44.
[22] *Id*. at n 15.
[23] *Id*. at 50.
[24] See *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968) ("The Institute's exemption from Michigan ad valorem tax is not determinable by its qualification as an organization

In *Wexford Medical Group v City of Cadillac*,[25] the Michigan Supreme court laid out a six-part test to determine whether or not the claimant is a charitable institution and stated that 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."[26]

The factors set forth by the Court in *Wexford* to determine whether or not a party is a charitable institution are as follows:

> (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.[27]

Though Respondent contends that Petitioner fails the *Wexford* test, the Tribunal finds this argument without merit. Respondent acknowledges that Petitioner is a nonprofit institution that is organized chiefly for charity, and its arguments with respect to the remaining factors are specific to the subject property, not the organization as a whole. It is clear to the Tribunal that what Respondent really disputes is not the nature of the organization, but rather Petitioner's

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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 . . . .").

[25] *Wexford Med Grp v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

[26] *Id*. at 211.

[27] *Id*. at 215.

occupancy of the property for charitable purposes. Even assuming that Respondent does dispute Petitioner's status as a charitable institution, Mr. Dillard's testimony established that Petitioner does not offer its charity on a discriminatory basis; it serves anyone with a barrier to employment: "It can be handicapped, whether they're mental or physical. It can be chronically unemployed. It can be folks coming back out of prison. It can be anyone that fills that kind of definition of needing help getting employment, have some sort of barrier to employment." The annual reports and other documentation further established that Petitioner provided services to a wide variety of individuals during the tax years at issue, and Mr. Dillard testified that there is no cap on the number of people Petitioner is willing to provide services to.[28] Mr. Dillard also testified that he believed that helping people to develop job skills and to get jobs helps them establish themselves for life, and the Tribunal agrees. There can be no doubt that Petitioner's programs relieve the "burden of government" by enabling self-sufficiency and by providing training and education for the people who use its facilities that, in some cases, would otherwise rely on the government for those same services. And while certain programs like the CNA program have costs attached to them, those costs consists of fees charged to governmental entities; Petitioner does not charge for its services.

Given the above, Petitioner clearly qualifies as a charitable institution within the meaning of both MCL 211.7o and MCL 211.9(1)(a). The only remaining issue is whether or not the "buildings and other property . . . are occupied by the claimant solely for the purposes for which it was incorporated." Petitioner contends that the subject property was occupied for such purposes because the revenue generated by store sales constitutes the largest resource of funds needed to maintain and operate its charitable activities, and without that revenue, the charitable activities would not occur.[29] The Tribunal agrees. The testimony and admitted documentation establishes that the subject property is necessary to fulfill Petitioner's charitable purpose, and as evidenced by the following discussion in *Liberty Hill*, the Michigan Supreme Court has repeatedly held that such properties are entitled to exemption:

> Likewise, in *Gull Lake Bible Conference Ass'n v Ross Twp*, 351 Mich. 269, 273, 88 NW2d 264 (1958), this Court noted that there was no dispute about whether the plaintiff owned or occupied the property. In that case, the plaintiff's stated purpose was '[t]o promote and conduct gatherings at all seasons of the year for the study of the Bible and for inspirational and evangelistic addresses.' The plaintiff sought a property-tax exemption for charitable organizations. Besides a tabernacle and youth chapel (for which the tax-exempt status was not contested), the property included an old hotel building used to house employees, a fellowship center building, a trailer campsite for persons attending the conference and living in trailers, cottages that were rented to persons attending the conference, a gravel pit, a picnic area, boat docks, a bathhouse, a beach, a playground, horseshoe and badminton courts, and parking areas. This Court determined that the housing and recreational facilities on the property were necessary to fulfill the plaintiff's purpose. Again interpreting the third element of the tax-exemption statute, this

[28] Those served included welfare recipients, working poor, developmental disability, learning disability, older worker, mental illness, homeless, at risk youth, unemployed and dislocated workers and ex-offenders.
[29] There is no dispute that the subject property is operated as a retail store, and that no charitable programs or services take place in this location.

> Court held that the property was occupied by the plaintiff solely for the purpose for which it was incorporated.
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> Finally, in *Oakwood Hosp Corp v State Tax Comm*, 374 Mich 524, 526, 132 NW2d 634 (1965) (*Oakwood Hosp I*), the plaintiff was a nonprofit corporation that owned and operated a hospital. The plaintiff claimed a tax exemption for property on which its hospital facilities were located. Also on the property were six houses that provided housing near the hospital for the resident physicians and interns whose services and availability to the hospital at all times were essential to the operation of the hospital. This Court held that the plaintiff was entitled to the tax exemption for the entire property, including the houses. This Court explained that housing the doctors and interns near the hospital was necessary to the proper functioning of the hospital. Therefore, the houses were 'occupied in furtherance of and for the purposes for which plaintiff was incorporated and for hospital and public health purposes.'[30]

Respondent cites *Gundry v RB Smith Mem'l Hosp Ass'n*[31] and *Michigan Baptist Homes & Dev Co v City of Ann Arbor*[32] for the proposition that property owned by a charitable institution and held as a source of income is not exempt from taxation. Respondent's reliance on these cases is misplaced, however, as they are factually distinct from the instant appeal. *Gundry* actually speaks to the fifth *Wexford* factor, i.e., that a charitable institution can charge for its services as long as the charges are not more than what is needed for its successful maintenance, and it has already been established that Petitioner does not charge for its services. Further, the holding of that case actually supports the Tribunal's determination in this case. The Supreme Court subsequently noted the following with respect to its holding in *Gundry*:

> Along with observing this ALR explanation, we relied on the definition we applied in *Michigan Sanitarium, supra,* and found that the facts of the case compelled the conclusion that the hospital was tax-exempt. For example, the hospital operated as a public hospital, rather than a private one, relying heavily on donations of money and volunteer work from the community. It was maintained without anyone profiting monetarily from it, and it did not pay any dividends. And surpluses, when there were any, were invested back into the hospital and used to maintain it. Thus, we held that the hospital was entitled to tax exemption, pointedly noting that an institution does not lose its charitable character merely because 'in some years, instead of the usual deficit, it shows a small surplus which is used to supply needed equipment.'[33]

Michigan Baptist Homes similarly speaks to the second and third *Wexford* factor, i.e., that a charitable institution is one that is organized chiefly, if not solely, for charity and does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve. The Court in that case concluded that the apartments for which the exemption was sought did not

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[30] *Liberty Hill*, 480 Mich at 53-54 (citations omitted).
[31] *Gundry v RB Smith Mem'l Hosp Ass'n*, 293 Mich 36; 291 NW 213 (1940).
[32] *Michigan Baptist Homes & Dev Co v City of Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976).
[33] *Wexford*, 474 Mich at 207.

provide a gift for the benefit of an indefinite number of persons or for the general public.[34] As explained in *Wexford*, "we found that Hillside Terrace, while purported to exist for benevolent, charitable, and general welfare purposes, was not actually furthering those objectives. Because of its selection process and resident-funded mechanism, we concluded that the home did not 'serve the elderly generally,' but, rather, 'provide[d] an attractive retirement environment for those among the elderly who have the health to enjoy it and who can afford to pay for it.' This structure for the nursing home, we held, did not comport with the legislative intent behind the charitable institution exemption statute."[35] And as previously discussed, Petitioner's purpose in the instant appeal is charitable, and it does not discriminate in the provision of its services.

For the reasons discussed above, Petitioner's use of the property falls within the broad umbrella of purpose articulated in its Articles of Association and, as such, Petitioner has satisfied the requirements for an exemption under MCL 211.7o.

JUDGMENT

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[36] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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

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

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[34] See *Ret Homes of Detroit Annual Conference of United Methodist Church, Inc v Sylvan Twp, Washtenaw Cty*, 416 Mich 340; 330 NW2d 682 (1982).
[35] *Wexford*, 474 Mich at 207–209.
[36] See MCL 205.755.

APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[37] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[38] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[39] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[40]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[41] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[42] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[43]

By: Steven H. Lasher

Entered: September 15, 2016
ejg

[37] See TTR 261 and 257.
[38] See TTR 217 and 267.
[39] See TTR 261 and 225.
[40] See TTR 261 and 257.
[41] See MCL 205.753 and MCR 7.204.
[42] See TTR 213.
[43] See TTR 217 and 267.