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

Sheet Metal Workers Local Union No 80
Apprenticeship Fund and SMW Local 80,
Petitioners,

v

MTT Docket No. 16-002089

City of Warren,
Respondent.

Tribunal Judge Presiding
Preeti P. Gadola

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On August 17, 2017, the parties filed cross motions requesting that the Tribunal enter summary judgment in their favor in the above-captioned case. On September 7, 2017, the parties each filed a response to the opposing Motions.

The Tribunal has reviewed the Motions, responses, and the evidence submitted and finds that granting Respondent's and denying Petitioner's Motion for Summary Disposition is warranted at this time.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that given the dual entity issue the property is not owned and occupied by an educational entity entitled to the exemption. More specifically, Respondent contends that there are two separate legal entities as Petitioners in this case: the Sheet Metal Workers Local Union No. 80 Apprenticeship Fund ("Apprenticeship Fund") and SMW Local 80 ("Corporation"). The Corporation is the entity which owns the property at issue and the Corporation was exclusively created to hold this property. Respondent contends that the Corporation cannot use Apprenticeship Fund's purported educational activities to claim the exemption whereas the Apprenticeship Fund cannot use the Corporation's ownership to claim the exemption. Respondent further contends that the Corporation similarly

does not occupy the property. Respondent also claims that "[t]he Apprenticeship Fund is simply not an educational institution within the meaning of MCL 211.7n."[1]

In support of its response to Petitioner's Motion, Respondent finds that Petitioner improperly contends that the burden rests on Respondent given that it granted the exemption in prior years. Respondent further contends that Petitioners failed to address the dual entity issue and failed to demonstrate that the Apprenticeship Fund fits into the general scheme of public education because there is demand for the work the Apprenticeship Fund trains its apprentices to do.

PETITIONER'S CONTENTIONS

In support of its Motion, Petitioners contend that the Tribunal should find that the two entities meet the requirements under MCL 211.7n. Petitioners state that the requirements under MCL 211.7n have remained unchanged since 1981, and that "it is fair to ask why Petitioner is put to the task and expense of proving what was previously established to Respondent's satisfaction."[2] Overall, Petitioners appear to be contending that Respondent has the burden to demonstrate, with specificity, how it contends Petitioners fail to qualify for the exemption. Petitioners further contend that the Tribunal should find that it is an educational institution which fits in the general scheme of education.

Also in the response, Petitioners contend that when considered together, Petitioners meet all of the criteria necessary for exemption of its property. Petitioners claim that the Corporation was formed after the Tribunal determined that the property must be owned by a corporation to qualify for the exemption. Petitioners allege that the statute does not require the Apprenticeship Fund to be incorporated. Overall, Petitioners determine that there is a public benefit in allowing this exemption.

STANDARD OF REVIEW

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.[3] In this case, Respondent moves for summary disposition under MCR 2.116(C)(8) and (C)(10) and Petitioners move for summary disposition under MCR 2.116(C)(10).

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[1] Respondent's Motion at 12.
[2] Petitioner's Motion at 7.
[3] See TTR 215.

MCR 2.116(C)(8)

Motions under MCR 2.116(C)(8) are appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." Dismissal should be granted when the claim, based solely on the pleadings, is so clearly unenforceable that no factual development could possibly justify a right to recovery.[4] In reviewing a motion under this subsection, the court must accept as true all factual allegations in support of a claim, as well as all inferences which can fairly be drawn from the facts.[5]

MCR 2.116(C)(10)

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.[6]

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.[7] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[8] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[9] Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.[10] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[11]

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[4] See *Transamerica Ins Group v Michigan Catastrophic Claims Ass'n*, 202 Mich App 514, 516; 509 NW2d 540 (1993).
[5] See *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).
[6] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).
[7] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[8] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[9] *Id.*
[10] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[11] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

CONCLUSIONS OF LAW

The Tribunal has carefully considered the Parties' Motions under MCR 2.116 (C)(8) and (10) and finds that granting Respondent's Motion and denying Petitioner's Motion is warranted.

The General Property Tax Act provides that "all property . . . within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."[12] Exemption statutes are subject to a rule of strict construction in favor of the taxing authority, and the taxpayer must prove that it is entitled to an exemption.[13] Statutes are to be interpreted according to ordinary rules of construction,[14] however, and "the preponderance of the evidence standard applies when a petitioner attempts to establish membership in an already exempt class."[15] Article 9 of the Michigan constitution designates nonprofit religious and educational organizations as exempt classes,[16] and in conjunction with that constitutional mandate, MCL 211.7n exempts from ad valorem property taxation "real estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific 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 . . . ."[17] Pursuant to this statutory language, there are four basic elements that must be satisfied in order to qualify for an exemption under this statute:

> (1) The real estate must be owned and occupied by the exemption claimant;
> (2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution;
> (3) The claimant must have been incorporated under the laws of this State;[18]
> (4) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes of which it was incorporated.[19]

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[12] MCL 211.1.
[13] See *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65; 894 NW2d 535 (2017).
[14] See *Inter Cooperative Council v Dep't of Treasury*, 257 Mich App 219 (2003).
[15] *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).
[16] Const 1963, art 9, § 4.
[17] *Id*.
[18] The statutory requirement for **Michigan** incorporation was held unconstitutional in 1972. The Court in *Wexford Medical Center v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), reiterated, "[t]he requirement that to be tax-exempt, an institution be incorporated within the state has been found to be unconstitutional."[18] *Wexford* at n. 5, referring to *American Youth Foundation v Benona Twp*, 37 Mich App 722,724 195 NW2d 304 (1972), citing *WHYY v. Glassboro*, 393 US 117, 89 SCt 286, 21 LEd2d 242 (1968).
[19] *Michigan United Conservation Clubs*, 129 Mich App 1, 9; 342 NW2d 290 (1983) citing *Engineering Society of Detroit v Detroit*, 308 Mich 539 (1944). While denial of an exemption on the basis of out-of-state incorporation has been held unconstitutional, the incorporation requirement stands. See *Michigan Laborers' Training & Apprenticeship Fund v Breitung Twp*, unpublished opinion per curiam of the Court of Appeals issued October 23, 2012 (Docket No. 303723).

Further, "an institution seeking an educational exemption must fit into the general scheme of education provided by the state and supported by public taxation," though "an educational exemption may be available to an institution otherwise within the exemption definition, if the institution makes a substantial contribution to the relief of the burden of government."[20]

In this case, Respondent disputes each of the factors given the dual entity issue. More specifically, there are two Petitioners in this case: Sheet Metal Workers Local Union No 80 Apprenticeship Fund ("Apprenticeship Fund") and SMW Local 80 ("Corporation"). The Corporation only meets the ownership and incorporation requirements and is not a nonprofit theater, library, educational, or scientific institution, nor does it occupy the subject property for the purposes for which it was incorporated or for any other purpose. The property is, rather, occupied by the Apprenticeship Fund which is undisputed in this case. Here, as in the case of *Czars, Inc v Dep't of Treasury*,[21] the Corporation and the Apprenticeship Fund were formed for two distinct purposes. More specifically, it is undisputed that the Corporation was incorporated "[t]o acquire, own and maintain real and personal property for the exclusive use of the Sheet Metal Workers Local Union No. 80 Apprenticeship Fund Trust . . . ." [22] This purpose clearly does not relate to the operation of a nonprofit theater, library, educational, or scientific institution. It is merely a corporation which exists to own and hold property. It is further clear that the two Petitioners are two separate entities and, as properly indicated by Respondent, the court cannot disregard the corporate entity or permit the Apprenticeship Fund to use the Corporation's ownership to satisfy the remaining requirements.[23] As previously determined by the Tribunal,[24] the facts of this case are distinguishable from the facts in *Nat'l Music Camp v Green Lake Twp*,[25] because that case "involved two exempt entities, using the same property for a common educational purpose."[26] This was key to the Courts' decision in that case, as it reasoned that "the purposes, officers, directors, management and location of the four Interlochen

[20] *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 755-56; 422 (1980).
[21] *Czars*, 233 Mich App 632.
[22] See Petitioner's Motion, Exhibit 4.
[23] See *Czars, Inc v Dep't of Treasury*, 233 Mich App 632; 593 NW2d 209 (1999) citing *Ann Arbor v University Cellar, Inc* 401 Mich 279; 258 NW2d 1 (1977).
[24] *Building Corp of the Detroit Electrical Industry Apprentice & Journeyman Training Fund v City of Warren*, ____ MTT ____ (2017) (MTT Docket No. 16-000831).
[25] *Nat'l Music Cam v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977).
[26] *Czars*, 233 Mich App at 643.

educational corporations [were] so comingled, interwoven and connected that they [were] in reality and for all practical purposes one corporation."[27]

Given the above, it is clear that when properly considering the two legal entities as separate and distinct, neither entity can meet all four requirements. The Corporation is not a nonprofit educational institution and does not occupy the property. The Apprenticeship Fund does not own the property and is not incorporated. As such, neither entity meets all four requirements and cannot qualify for an exemption under MCL 211.7n.

Respondent also contends that, even if the Apprenticeship fund met the ownership and incorporation factors, it would not qualify as it is not an educational entity. The Tribunal finds that the most pertinent case on this issue is *Michigan Laborers' Training & Apprenticeship Fund v Breituing Twp*.[28] Petitioner contends the Tribunal should disregard this case as being too remote in time as it is "essentially based on an opinion reviewing public and nonpublic educational institutions existing in 1948, is dated and not relevant to current circumstances."[29] The Tribunal is not persuaded by this analysis. Rather, the *Michigan Laborers'* decision was issued in 2012 and is a highly relevant decision. The Court of Appeals summarized the facts as follows:

> The Tax Tribunal concluded that petitioner in this case provides an apprenticeship program that includes training in the classroom and in the field for craft laborers. Students who complete the program become classified as journeymen. Petitioner also retrains journeymen. Baker College awards college credit to students who complete some of petitioner's courses, but does not award any degree for completion of petitioner's program alone. Petitioner's purpose is "to improve and expand the competitive position of employers and union laborers." The Tax Tribunal's factual findings in this regard are supported by the record.
>
> Thus, petitioner provides education and training to individuals who wish to work in the field of construction craft labor, and is a specialized school operated for the purpose of training its students to enter a specialized field of employment and not an educational institution just like the petitioner in *Detroit Commercial College.*[30]

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[27] *Nat'l Music Camp*, 76 Mich App at 614.
[28] *Michigan Laborers' Training & Apprenticeship Fund v Breitung Twp*, unpublished opinion per curiam of the Court of Appeals, issued October 23, 2012 (Docket No. 303723).
[29] Petitioner's Motion at 10.
[30] *Michigan Laborers'*, unpublished opinion at 4.

As a result, the Court of Appeals held that the petitioner did not fit into the "general scheme of education provided by the state and supported by public taxation" as required by *Ladies Literary Club v Grand Rapids*.

In this matter, Petitioner similarly contends that it "provides necessary technical training in the sheet metal and air handling industries, not only the education and initial training of apprentices, but ongoing training for journeyman."[31] Petitioner claims that a consequence of its training is the advancement of the interests of the union, of which an applicant must become of member upon acceptance into the program, as well as the interests of employers.[32] Finally, Petitioner admits that "schools operated by Joint Apprenticeship Training Committees are well placed to fill the need which many publicly supported educational programs cannot."[33] The Tribunal finds the Apprenticeship Fund to be similarly situated as the Petitioner in *Michigan Laborers'* and as such, the Apprenticeship Fund is a specialized school and does not fit into the general scheme of education.

Petitioner's primary contention is that it has been historically granted the exemption and the corporation structure and use has not changed since the granting of the exemption in 2004. Petitioner's contention is wholly without merit as the "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day . . . ."[34] The historic granting of an exemption does not set fort that the exemption shall continue as the property is to be evaluated as of December 31, each year and the prior years' evaluation and exempt determination is not binding on future assessments. Petitioners even note in their Motion that Respondent has the authority to reassess property annually and that Respondent is not required to perpetuate a mistake.[35] However, Petitioners improperly state the burden is upon Respondent to set forth the criteria upon which it determined Petitioners do not qualify. Nevertheless, the Tribunal finds that Respondent has, in fact, set forth with specificity the reasons for which it believes Petitioners do not qualify for the exemption in its Motion and response to Petitioner's Motion.

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[31] Petitioner's Response at 9.
[32] Petitioner's Motion at 5.
[33] Petitioner's Response at 11.
[34] MCL 211.2(2).
[35] Petitioner's Motion at 7.

Petitioners additionally contend that the statute does not require the Apprenticeship Fund to be incorporated. The Tribunal finds, however, that the case law (as cited above) is clear that the entity claiming the exemption must meet all four criteria, one of which is incorporation. Petitioners have failed to demonstrate how the Corporation's incorporation and ownership can be transferred to the Apprenticeship Fund to find those factors to be met. Moreover, Petitioners also discuss that they provide a benefit to society and the exemption should stand. The Tribunal finds this is not an argument grounded in law. The Tribunal's powers are limited to those authorized by statute and do not include powers of equity.[36] It is clear that neither Petitioner meets the requirements under MCL 211.7n and the Tribunal cannot merely grant the exemption on the basis that Petitioners provide some societal benefit.

Given the above, the Tribunal finds that neither Petitioner can independently meet each of the four requirements to qualify for the exemption under MCL 211.7n. The Corporation is incorporated and owns the property but is not an educational institution and does not occupy the property. The Apprenticeship Fund does not own the property and does not fit into the general scheme of education. As such, Respondent's Motion for Summary Disposition shall be granted and Petitioner's Motion for Summary Disposition shall be denied.

JUDGMENT

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

IT IS FURTHER ORDERED that Petitioners' Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that the 2017 assessment is AFFIRMED.

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

[36] See *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346; 411 NW2d 169 (1987), *Elec Data Sys Corp v Flint Twp*, 253 Mich App 538; 656 NW2d 215 (2002), *VanderWerp v Plainfield Twp*, 278 Mich App 624; 752 NW2d 479 (2008).

judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, and (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, and (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the 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]

[37] See TTR 261 and 257.
[38] See TTR 217 and 267.
[39] See TTR 261 and 225.
[40] See TTR 261 and 257.

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 Preeti Gadola

Entered: December 8, 2017

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[41] See MCL 205.753 and MCR 7.204.
[42] See TTR 213.
[43] See TTR 217 and 267.