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

FINAL OPINION AND JUDGMENT ON REMAND

INTRODUCTION

On September 26, 2012, the Tribunal entered an Order denying Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) and instead granted summary disposition in favor of Respondent pursuant to its Motion for Summary Disposition under the same court rule. ("Order"). On February 18, 2014, the Michigan Court of Appeals ("Court") issued an unpublished opinion *per curiam* (Docket No. 312856), remanding the case as there is "a genuine issue of material fact regarding petitioner's status as an educational institution, pursuant to MCL 211.7n; it has also raised a genuine issue of material fact regarding petitioner's status as a charitable institution, pursuant to MCL 211.7o." In response to the Court's directive, the Tribunal held a fact hearing on January 28, 2015, in order to gather the material facts requested.

Petitioner, Harmony Montessori Center ("Harmony"), filed its petition, initiating the above-captioned appeal, on May 29, 2009.[1] The petition indicates this matter involves issues relating to the 2009 March Board of Review's denial of an exemption for Harmony, a non-profit Montessori preschool and kindergarten 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. After gathering additional facts, as directed by the Court, the Tribunal finds that Petitioner does not qualify for an exemption from property taxation under either of the aforementioned statutes.

[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." This appeal was for tax years 2009-2012.

Educational Exemption under MCL 211.7n

MCL 211.7n provides, in part:

> 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 *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944), the Court of Appeals set forth three criteria that must be met in order to qualify for an exemption as an educational institution under MCL 211.7n:

1. The real estate must be owned and occupied by the exemption claimant;

2. The exemption claimant must be a [nonprofit] . . . 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.[2]

The court in *Ladies Literary Club v Grand Rapids,* 409 Mich 748, 755-756; 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.

In its Order the Tribunal found, and the parties stipulated in its joint stipulation of facts ("JSOF"), that the property is owned and occupied by Harmony, it is a non-profit educational institution and its buildings and other property thereon are occupied solely for the purposes for which it was incorporated. The Tribunal found that Harmony did not fit within the general

[2] 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. See *OCLC Online Computer Library Ctr, Inc v 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).

scheme of education and the Court reversed. The Tribunal further found that Harmony did not contribute substantially to the relief of the educational burden of government, upon which finding the Court required additional facts. The Court found that "in order to make a 'substantial contribution,' the institution must show that 'if [it] were not in existence, then . . . a substantial portion of the student body who now attend that school [would and could] instead attend a State-supported [school]'" *David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231, 240; 160 NW2d 778 (1968). The Court wrote in its Opinion and Remand ("Remand"),

> However, there is a substantial question of fact about whether "a substantial portion of the student body" **could and would** attend a state-funded elementary school or preschool.[3] *Id*. The tax tribunal determined that petitioner did not make a substantial contribution based solely on the number of children enrolled in petitioner's kindergarten or joint kindergarten and preschool programs. It failed to consider the children who were enrolled in petitioner's preschool program that **would and could** have attended the Great Start Readiness Program, and that **would and could** have attended a state-funded kindergarten program, even though they were enrolled in a Montessori preschool program. MCL 380.1147(1) and (2) allow a child who is five years old on December 1 of the enrollment year, to enroll in elementary school. MCL 388.1632d generally outlines the requirements for children to qualify for the Great Start Readiness Program. Children who are aged four qualify for the program. MCL 388.1632d(1). The lower court record does not contain information regarding the ages of the preschool children or whether they could and would attend kindergarten or a Great Start Readiness Program preschool. [Emphasis added].

With regard to the Court's question, could children who attended Harmony attend a state-funded kindergarten if Harmony wasn't in existence, at the hearing of this matter, Petitioner's co-director, Karen King, testified that in 2009, ten five-year-olds attended Harmony, in 2010, twelve five-year-olds attended, in 2011, thirteen five-year-olds attended and in 2012, twelve five-year-olds attended Harmony Montessori.[4] However, pursuant to JSOF no. 23, in 2008-2009, five children participated in the kindergarten program, in 2009-2010, four children participated in the kindergarten program, in 2010-2011, six children participated in the kindergarten program

[3] "Petitioner argues that the courts should not establish numerical thresholds in order to define what constitutes substantial contribution. We agree that there is no "bright line" threshold, either for a specific number or a specific percentage. However, determining the percentage of students who would and could attend a state-funded school does aid a court in determining if petitioner meets the "substantial portion of the student body" test. *David Walcott Kendall Mem. Sch.*, 11 Mich.App at 240."

[4] Tr. at 55-56.

and in 2011-2012, eight children participated in the kindergarten program.[5] The Tribunal opines that not all of the five-year-old Harmony enrollees attended the Montessori kindergarten program and that their parents chose to have them participate in the pre-school program for another year.

It would appear that Harmony children of five years of age could attend state-funded kindergarten. However, the more interesting question is, would they attend? The Tribunal opines that, "no" they would not. Although there were forty-seven five-year-olds at Harmony during 2009-2012, only 23 actually participated in kindergarten and the kindergarten classroom consisted of two-and-a-half to six year-olds, thereby further reducing the number of children who would participate in public kindergarten.[6] Further, at the hearing of this matter and in the JSOF, Petitioner explained that the Montessori Method of teaching is different than public school education. In JSOF no. 16, it states,

> 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.

At the hearing of this matter, Ms. King testified that to be "a lead teacher in a classroom, you need to have a bachelor's degree and a teaching certificate form a Montessori training center."

[5] Presented along with both parties' Motions for Summary Disposition and as R-5, here.

[6] JSOF no. 23.

She testified that it takes a year to complete Montessori teacher training. [7] Ms. King further testified that children learn,

> life skills, such as pouring, spooning, dressing themselves, care of the environment, such as sweeping and mopping and dusting . . . . We do handwriting and reading . . . . Our fourth area is math. We start with basic one to five activities, for example, and go on through the decimal system, addition and subtraction, depending on what level the child is at . . . We do geography, history, sciences. I am not sure what else. There is a lot.[8]

She also testified that "the preschool children can get into very difficult geography . . . ."[9] When questioned about the differences between Montessori education and public school education, Ms. King answered: "Q. Are children at Harmony taught based [upon] their skill set of age?" "A: Skill set." "Q: In public school are children taught based on their age, grade, or skill set?" "A: I would say mostly grade."[10] Finally, when questioned about how a Montessori education compares to public school education, Ms. King answered, "Well, I think that the children have a lot more personal attention with three teachers in the classroom . . . . The education is quite high at Harmony."[11] The Tribunal finds, given that the Montessori Method is a specific type of teaching, with specially trained teachers, multi-age interaction, advanced subject matter beyond public school kindergarten, and with small student- teacher ratios, that if Harmony didn't exist, the parents of Harmony students **would** send them to another Montessori school, but not to public school.

The next question presented at the hearing of this matter, are there public Montessori schools funded by the state for which Harmony is relieving a burden? It appears that the answer is, "no." On cross-examination, when questioned regarding publically funded Montessori schools, Ms. King answered:

> "Q: You testified earlier that you are aware of public charter schools that are affiliated with montessori centers, correct?" "A: Public Charter Schools, yes." "Q. Isn't it true that you have no idea whether or not these schools charge tuition for the preschool and montessori programs?" "A. "Well, I have heard that you said that. I have not personally looked into it." "Q: So you wouldn't know, for

[7] Tr at 42-43.
[8] Tr at 47.
[9] Tr at 48.
[10] Tr at 49.
[11] Tr at 60.

> example, that Four Corners Montessori in Madison Heights charges tuition …." [12] "Q: Ms. King, you wouldn't know then that Avondale Montessori in Auburn Hills, for example, charges tuition for its preschool and montessori programs?" "A. No." "Q. Or that Howe Elementary in Dearborn charges tuition for its montessori and preschool?" "A. No." "Q. Are you aware of any public charter schools that are in existence that do not charge tuition for its montessori and preschools?" "A. No." "Q. And isn't that because there are no public charter schools in the state of Michigan that provide free tuition for montessori and preschools?" "A. I would guess that's true, but I don't know for sure.[13]

The Tribunal finds that Harmony relieves no governmental burden, given that public Montessori preschools and kindergartens also charge tuition and are not funded through the state. Further, if publically funded Montessori programs existed, why would any parent send their children to Harmony? Ms. King was questioned, "Q. If Oak Park School District (where the subject property is located) had a publically-funded montessori program, could Harmony stay in business?" "A. Probably not." It should be noted that Harmony charges between $7,000 to $8,100 per student per year for a Montessori education. [14]

The Court also questioned how many Harmony students could and would attend publically-funded preschool, such as the Great Start Readiness Program ("Great Start")?[15] The Great Start program is,

> Michigan's preschool program for four year olds. GSRP is a 30-week classroom-based experience to prepare children for kindergarten. At least half of children in any GSRP program must live in families with income below 300 percent of the poverty level, and all must qualify with at least two of 25 risk factors, such as living with a single parent. GSRP helps children get ready for school, increases attendance and reduces the number of children who repeat a grade by almost one-half.[16]

Ms. King testified when questioned, "Q: And you would agree that in order to qualify for the Great Start Readiness Program families have to, their income must be below a certain percentage of the federal [poverty] level?" "A: Yes." "Q: So then you would agree that families that go to your school at Harmony cannot or would not qualify for the Great Start Readiness Program,

---

[12] The Tribunal allowed this line of questioning over Petitioner's objection.
[13] Tr at 68-69.
[14] Tr at 58, 66.
[15] The Great Start Readiness Program is funded by the State of Michigan and is often confused with the Head Start program which is federally funded.
[16] http://www.greatstartlivingston.org/faqs.html, viewed March 16, 2015.

correct?" "A: Most would not. Some would."[17] Ms. Anna Fast, co-director of Harmony, who is "in charge of most of the financial aspects of payroll and, you know, accounts payable, accounts receivable, tax-related issues. Just the money side of things,"[18] testified that since 2009, only two need based scholarships were given.[19] Therefore, given only two need-based scholarships were supplied during the tax years in question, the Tribunal opines that two children could have qualified for Great Start; however their parents chose to pay some part of the $7,000 -$8,100 tuition per year for a Harmony education.[20] The preceding sentence leads to the answer to the question; would children enrolled in Harmony attend state-funded Great Start if Harmony didn't exist? Again, the Tribunal opines, "no." Harmony offers a specifically desired type of education, not found in public school, for parents to come up with tuition to send their children. The Tribunal finds that if Harmony didn't exist, its students would attend another Montessori school, rather than a state-funded Great Start.

Charitable Exemption under MCL 211.7o

In order to determine if it is entitled to a property tax exemption under MCL 211.7o, Harmony 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. *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 737 (1985). In *Michigan Baptist Homes and Dev Co v Ann Arbor*, 396 Mich 660, 670; 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." 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* at 215, that several factors must be considered in determining whether an entity is a charitable institution for purposes of MCL 211.7o:

[17] Tr at 65-66.
[18] Tr at 15.
[19] Tr at 31.
[20] Harmony has never allowed a student to attend unless they were able to pay some portion of the tuition. Tr at 64.

(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.

The Court found that Harmony met *Wexford* prongs one and three through six, but held that additional facts were needed to determine if it was "organized chiefly, if not solely for charity."

The Court wrote in its Remand,

> [The] fact that petitioner charges for its services does not necessarily preclude it being a "charitable institution." Conversely, the fact that an institution may be operating at a loss at any given point in time does not automatically make it charitable; **if the deficit is to be made up by those receiving the services, it would not be charitable,** whereas if the deficit is *not* being made up by those receiving the services, it might be. *Wexford,* 474 Mich. at 207–209, 217. **It appears from the record so far developed that any member of the public may obtain from petitioner more education than they are, strictly speaking, paying for.** We conclude, therefore, that petitioner has established a genuine question of material fact whether it is a charitable institution. [Emphasis added].

At the hearing of this matter, Ms. King was questioned regarding Harmony's operation at a net loss. "Q: If Harmony operated at a net loss in a given year, in order to make up that loss you raised tuition the following year, correct ma'am?" "A: Sometimes." "Q: When is the last time that Harmony Montessori had a net loss, if you could tell the Court in your role as business director?" "A: Yeah, in that whatever, 2012, '13." "Q: So in 2012 or '13, did Harmony

Montessori have a net loss in its books at the end of its fiscal year?" "A: Yes." "Q: In the following year, did you raise tuition rates to try to make up that loss?" "A: Yes."[21] Further, during the June 2010 to May 2011 fiscal year, Harmony's net income was negative and it also covered this loss by raising tuition "a little bit. . . ." [22] The Tribunal finds that in 2012 and/or 2013, the deficit in Harmony's budget was made up by those receiving the services, meaning the families of the children paying increased tuition; therefore, per the Court's aforementioned directive, it is not charitable.

The Court further held in its Remand, "It appears from the record so far developed that any member of the public may obtain from petitioner more education than they are, strictly speaking, paying for." The aforementioned determination may be technically true; however, as stated above, the tuition deficit was made up for by raising tuition for all students the subsequent year. Further, the proposition is somewhat nonsensical. If a person goes to a store or restaurant with a coupon to purchase goods or food, are they strictly speaking, getting more goods/food than they paid for, therefore the store or restaurant are charitable institutions? If a doctor's office writes off charges not paid for by a patient's insurance company, is the doctor providing more medical service than paid for, therefore his/her office is a charitable institution? Furthermore, the testimony presented does not support the overall charitable nature of Harmony. Harmony charges a registration fee, late pick-up fees of $1.00 per minute, schedule change fees, late tuition and return check fees. Finally, Harmony not only *never* offers free tuition to needy students, it has also given only two need-based scholarships since 2009. Further, Ms. Fast testified that since its inception in 1998, Harmony has given only eight need-based scholarships in seventeen years and Harmony had five-hundred students attend since 1998.[23] Harmony has no written policy regarding how it determines to offer a need-based scholarship. When questioned about the policy, Ms. Fast testified, "We don't have a formal policy." When questioned, "Q: There is nothing in writing whatsoever about need-based discounts for disadvantaged children, is there, ma'am?" "A: No."[24] Ms. Fast testified, "We occasionally give people discounts."[25] The Court determined that Harmony "does not offer its charity on a discriminatory basis by choosing

[21] Tr at 36-37.
[22] Tr at 24.
[23] Tr at 34-35.
[24] Tr at 36.
[25] Tr at 34.

who, among the group it purports to serve, deserves the services." [26] However, with no written policy, the Tribunal questions whether it does? Again, eight children out of 500 received discounted tuition in the seventeen years of Harmony's existence. The Tribunal finds that it is hardly a charitable institution existing "chiefly, if not solely, for charity."

The Tribunal finds that, after gathering the additional material facts, as directed by the Court in its Opinion and Remand, parcel number 52-25-19-277-035 is not exempt from ad valorem property taxation under MCL 211.7n and/or MCL 211.7o for the 2009-2012 tax years.

JUDGMENT

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax years 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. See MCL 205.755. 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, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through June 30, 2015, at the rate of 4.25%.

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

By: Preeti P. Gadola

Entered: March 20, 2015

[26] *Wexford*, prong three.