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

Creative Beginnings Child
Development Center Inc,
Petitioner,

v

MTT Docket No. 14-002338

Union Township,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Creative Beginnings Child Development Center Inc, appeals the March 2014 Board of Review's denial of a requested charitable exemption from property taxation under MCL 211.7z(1) and MCL 211.7o(1) for parcel number 14-017-40-009-02.

A hearing on this matter was held on December 10, 2015. Petitioner was represented by Ravi K. Nigam, attorney. Respondent was represented by Frederick C. Overdier, attorney, of Braun Kendrick Finkbeiner PLC. Petitioner called three witnesses, and introduced 25 exhibits. Respondent called one witness and introduced 5 exhibits.

Based on the evidence, testimony, briefs of each party ordered at the close of hearing and filed on January 28, 2016, and the case the file, the Tribunal finds that no exemption shall be granted under MCL 211.7z(1), but that the subject property shall be granted an exemption under MCL 211.7o(1) in the amount of 100%.

The subject properties' true cash values ("TCV"), state equalized values ("SEV") and taxable values ("TV") for the tax years at issue shall be as follows:

Parcel Number: 14-017-40-009-02

Year	TCV/SEV/TV
2014	0
2015	0

PETITIONER'S ADMITTED EXHIBITS

P-1B Articles of Incorporation

P-4 IRS Letter of Determination

P-5A 2012 Notice of Assessment

P-5B 2013 Notice of Assessment

P-5C 2014 Notice of Assessment

P-5D 2015 Notice of Assessment

P-5E BSA Tax history, 2005-2015

P-7B Letter from Assessor to Petitioner's counsel dated 12/28/2011 denying exemption

P-7C Protest to March 2013 BOR asking for exemption, BOR denial, Letter from Petitioner to BOR

P-7D 2014 Application to March BOR, denial, Letter from Petitioner to BOR

P-7E 2015 Application to March BOR, denial, Letter from Petitioner to BOR

P-8A 2012 IRS Form 990

P-8B 2013 IRS Form 990

P8C 2014 IRS Form 990

P-9A 2013/2014 MCESA Contract

P-9B 2014/2015 MCESA Contract

P-9C 2015/2016 MCESA Contract

P-10 Early Head Start Agreement

P-11 Affiliation agreement

P-12 Student lab site placements

P-13 Work-based training agreement.

P-14A Kindergarten requirement document

P-14B Care through Office of Great Start

P-14C Great Start Readiness Program

P-14D Whitehouse – President's Early Learning Initiative

P-14E Partnership for America's Economic Success

P-14F National Poll on Early Childhood Education

P14K IRS document on 501(c)(3) qualifications for Child Care Organizations

P-16B Curriculum

P-16D Objectives

P-16F Screening form

PETITIONER'S CONTENTIONS

Petitioner contends that it is a non-profit preschool day care set up to service the under-privileged population of greater Mt. Pleasant to provide early learning for infants through preschoolers; to help train future teachers and to allow parents to work or attend school by providing early education and child care for their children. Petitioner contends that it is entitled to an exemption under MCL 211.7z(1), as it trains teachers for several qualifying schools. Petitioner also contends that it qualifies for a charitable exemption from property taxes, meeting the criteria set forth in MCL 211.7o(1), as well as the six factors found in *Wexford Medical Group v. City of Cadillac.*[1] Accordingly, it contends that the subject's assessed value and taxable value should be zero.

PETITIONER'S WITNESSES

Petitioner's first witness was Michele Colores, founder, President and Executive Director of Petitioner. Colores testified that she earned a Master's Degree in Early Education from the University of Colorado, specializing in infant, toddler and special-needs children.[2] She read into the record, Article 2 of Petitioner's Articles of Incorporation:

> To provide day care for children between the ages of six weeks and twelve years old on a nonprofit basis as defined by MCL 450.2108, Michigan Nonprofit Corporation Act, so that parents or guardians of such children can be gainfully employed outside the home to provide such care in the form of planned and supervised activities, to provide such care to the general public without reference to race, color, creed, sex, or national origin.[3]

Colores testified that Petitioner has another facility inside the Isabella County Medical Facility which was full, other centers in Mt. Pleasant were closing, there was a need for high quality education and child care in the community, and the subject property was already set up as a preschool by a previous 501(c)(3) entity.[4] At the time Petitioner purchased the building in 2011, Colores was surprised that the property was not tax exempt.[5]

When asked about the population that Petitioner serves, Colores stated:

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[1] 474 Mich 192; 713NW2d 734 (2006).
[2] T. p. 11
[3] T. p. 12-13
[4] T. p. 14
[5] T. p. 17

> Q Okay. All right. Let me talk more about the population you serve with Creative Beginnings. So what are -- can you give me a little bit of idea about the kind of -- the population around there and the children that you're actually helping?
>
> A Yes. We serve all families without -- we don't discriminate on the basis of race or religion or put that in there.
>
> Q Do you discriminate at all?
>
> A No, we do not. We are -- we are -- we do charge tuition for our services because that is how the teachers are paid. They are degreed teachers in early childhood education, so they are highly-qualified teachers. We provide a curriculum, we provide assessment.[6]

Regarding tuition, Colores testified that there was a high degree of turnover of pre-school teachers because of pay below the poverty level.[7] She further testified as follows regarding tuition:

> Q Okay. Let's go back now. You talked about pay. So how is Creative Beginnings financed right now? You said you charge fees for all students?
>
> A Correct. We charge fees for the -- the age – the different ages. Because the state requires a -- different ratios for different ages.
>
> Q And why does the state require that? Is it because you are a separate sort of a program, or what are they –
>
> A The state has minimum licensing requirements for all licensed child care and/or preschool facilities.
>
> Q Okay. And your fee structure, so do you have any people who are subsidized by you or by the state?
>
> A We do have children and families who receive child care assistance through the Department of Human Services. The Great Start Readiness Program, preschool program, is subsidized or there -- the Michigan Department of Education pays for those slots for eligible children for that school year that meet certain eligibility requirements.
>
> Q But basically you -- every student has to pay you? I mean every -- every student there has -- you have to have some money from? You are not doing it for free?

[6] T. p. 17-18
[7] T. p. 33

> A We can't do it for free because we wouldn't be able to pay the teachers to be there. We wouldn't be able to buy the food to feed them or pay for the building to house them in.[8]

As to late fees, Colores testified as follows:

> We do have a policy for late pick-up fees because, when our teachers have to stay with children, we have to -- we're required to pay them overtime. It's not in our budget to pay teachers overtime. And we do that to deter habitual offenders of that. Also, so that the children can get home, eat dinner, and -- and go to bed, have a bath in a timely manner.
>
> Q So do you -- is that very strictly enforced? Do you -- does everybody have to pay if they're late; or is that, like, only if they have been late for a certain number of times before you do that? And how is that determined?
>
> A We do give them a five-minute grace period. So, if they're five minutes late, we do not charge them. If they're past five minutes late, we do charge them.
>
> * * *
>
> With the late pick-up fees, we do charge, again, specifically because we incur the expense of paying overtime to the teachers or the staff with them.[9]

On cross, Colores admitted that every child that is enrolled in the facility has to pay tuition or is funded through a program such as Great Start.[10] She also testified that approximately 25% of the children are enrolled in the Great Start Program.[11] It was also brought out on cross that Petitioner received various gifts and grants from Dow Corning, the USDA Rural Development Community Facilities child care grant, as well as the USDA child and adult care food program, and the Great Start Readiness Program.[12] It was noted by counsel that the amount of financing by gifts and grants was a relatively small percentage of Petitioner's gross revenues.

As to profitability, Colores testified that the income tax returns while showing a profit for 2012, 2013 and 2014, did not separate the profitability of the subject from its other location, and included money it received in grants from the USDA Food Program and other grants. She also noted that the profits came after a deficit for 2011. As to what was done with the profits, Colores stated that the profits were put into a playground, improvements to the parking lot, carpeting, a commercial dish washer and water filter system. She affirmatively stated that the profits did not

[8] T. p. 29-30
[9] T. p. 34
[10] T. p. 59
[11] T. p. 55
[12] T. p. 55-57

go out to any individual, and that the salaries paid were low, and fall within the federal poverty level.[13]

Colores testified regarding two governmental programs that Petitioner is involved with that help pay the cost for children, but also results in increased costs to Petitioner because of a "blended fee." Colores explained as follows:

> The Great Start Readiness Program is the state-funded free pre-K program for children the year prior to entering kindergarten. It is for families that meet eligibility requirements of income as well as risk factors for developmental delays or for the – for children developmental delays. It can be a blended program, according to the Michigan Department of Education. Our preschool program is a tuition and GSRP-blended preschool program. So some of the children in there are funded through Michigan Department of Education via Midland County ESA through our con -- this contract we have with them. And the others are -- are tuition-paying children.
>
> Q Okay. And what does "blended" mean? I mean how does that affect you?
>
> A "Blended" means that we can still have our children who have been with our program from some as early as infancy all the way up through till they start kindergarten. We can keep them in the preschool classroom even though we are educating preschool children through the -- the Great Start Readiness Program as well. We do have to pay a blending fee to the consortium, which is the Midland County ESA, for our tuition children. We pay out of pocket for the support services that they provide to the classroom for Great Start Readiness Program.[14]

Colores also testified that Petitioner participates in the Federal Early Head Start Program, which applies to children under age three who income eligible and at risk for developmental delays.[15]

Colores gave testimony regarding the curriculum offered at the center, pointing out that her preschool uses what is required by the Michigan Department of Education for running a Great Starts Readiness Program, which is state funded for eligible families. As for toddlers, she explained that her staff has training in early childhood education to help a child feel secure, and learn self-help skills, socialization skills, learn to walk, talk, learn their colors, letters, numbers and shapes.[16] When asked to differentiate what Creative Beginnings does from a regular day care, Colores testified:

> A highly-educated teacher in an early childhood program will set up an environment that is conducive to learning in a developmentally-appropriate

[13] T. p. 31-33.
[14] T. p. 37-38
[15] T. p. 38-39
[16] T. p. 20-21.

> manner. They -- their interactions with the children might be different from someone who is not educated in early childhood education in terms of scaffolding a child to learn at the next level, to -- to teach them things that -- that are a little bit of a challenge but that they can still be successful in. All of these skills help to prepare them for kindergarten and help them to be successful -- typically more successful by third grade . . . .[17]

Regarding curriculum, she further testified:

> We teach -- at the preschool level, we would teach pre-math skills, pre-reading skills, math skills in the form of classification. They might take a -- a group of small toys with different attributes, different shapes or colors or sizes. We might ask them to classify them, you know, by -- by color or by size. These are all pre-math skills that help to shape a child's brain so that, when they enter school, they are ready for the kind of instruction that is appropriate for a kindergartner but not the paper-and-pencil types of activities would not be appropriate for -- developmentally appropriate for children under kindergarten age.[18]

Colores also testified as to various child assessment protocols which Petitioner engages in, including Teaching Strategies Gold, which she described as used perhaps world-wide; definitely nationwide, by many programs. It is approved by the Michigan Department of Education for use in their funded Great Starts Readiness Program. She also testified as to the use of the Great Starts Readiness Program, funded by the Michigan Department of Education. [19] She testified that there was an expense to the Petitioner in purchasing the Teaching Strategies Gold system, and in having regular parent-teacher conferences to share the progress, or point out developmental delays, such as speech and language, for each child in the program. She also testified as to the use of the ASQ-3 screening tool, also approved by the Michigan Department of Education in order to operate the Great Start Readiness Program.[20]

Colores also elaborated on teacher training, which is another activity of Petitioner. Petitioner entered into agreements with Central Michigan University, Mid-Michigan Community College and the Mt. Pleasant Area Technical Center, housed in Mt. Pleasant High School. These programs help to train future teachers, giving them hands-on experience as well as high school or

[17] T. p. 21
[18] T. p. 28
[19] T. p. 23-24
[20] T. p. 25-26

college credit in the area of early childhood education, along with experience in handling infants and toddlers.[21]

Petitioner's second witness was Holly Hoffman, Ph.D., and Chairperson of the counseling and Special Education Department at Central Michigan University. She is also on the Board of Petitioner, and was qualified as an expert in child development.[22] When asked as to why child development was important, Dr. Hoffman answered:

> It's very important. There's lots of research that supports that investment in early childhood -- that, if we intervene early and provide positive learning opportunities for children, social, academic, physical, emotional, we will see rewards later. So there's some information that came out from the White House that says every single dollar that is invested in early childhood, we'll see an $8.60 return back in our communities. So that's going to help with less intervention that we'll have to help with remedial skills, those types of things. So there's a financial benefit. There's a professional benefit for people who go into school prepared, and they actually do well. They do better, and then they're able to achieve higher income and better job satisfaction.[23]

Dr. Hoffman also explained that Michigan was a "birth-mandated" state, supporting education right from birth as helping children who are at risk, as well as non-at risk children. She discussed the origins of Early Head Start, to educate children ages 0 to three.[24] She then discussed the origin of Great Starts:

> So Michigan noticed that we have this program for three- to five-year-old children in Head Start. But there was a gap between children whose families could pay for education, preschool education, and then children that were qualifying for Head Start. So the income -- these were families who made too much money to qualify for Head Start but not enough money to pay tuition. So that's where Great Starts came in. So it specifically targeted at that gap in between. And so the guidelines, the financial guidelines, are higher than Head Start; but they're not as high as a tuition-paying. So Michigan stepped up and did Great Starts. It was Michigan specific.[25]

As an officer and director of Petitioner, Dr. Hoffman was asked about the goals of Petitioner, and answered as follows:

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[21] T. p. 41-44
[22] T. p. 67-68
[23] T. p. 65-66
[24] T. p. 68-69
[25] T. p. 69

> Creative Beginnings plays multiple roles in our community. They are very -- they have high quality, early childhood programs at two of their locations; so they address the need. They had a waiting list. And, when I was a parent, I was over at their original location; and they were at maximum enrollment. And so then they checked into another opportunity and opened the second place. They have -- they are a lab facility for our students. Being in a college town, we have great access to students who are interested in this field. And so they bring with them a high level of enthusiasm and commitment to the field. And so Creative Beginnings not only offers the exemplary program and high models of what a good program looks like, they also offer those opportunities for students who are teachers in training. And so those are benefits for the students as well, for the young children as well.
>
> They're also a -- an important member of our community. About a quarter of the children that they serve are having a hard time financially. They would qualify to receive services of support. In our county, it's about -- 20 percent of individuals are about at the poverty line. So while our -- our Mt. Pleasant residents are -- are not in general a real diverse group, we -- because we are a college town, we do have people that come to the area on a more temporary basis, either, you know, to fulfill their education, to fulfill their goals, and you saw those examples. You know, Michigan State or Central Michigan, Mid-Michigan, and the technical center, we've got those connections, or Creative Beginnings has those connections. People will come and have a time where they may have more financial burden than they would have later in their life. They might be not employed right now because they are going to school. . . . And then they will be employed later.[26]

Petitioner's final witness was April Schafer. She testified that while she was in pursuit of her GED, she had a 2 year old daughter and no money. With the help of a grant from the Chippewa Indian Tribe, she was able to enroll her daughter with Petitioner. Schafer testified that after receiving her GED, she started community college, and with the help from DHS, (Department of Human Services) and then Great Starts, she was able to keep her child enrolled, and was able to pursue an Associate's Degree in Health Science, and to go forward in pursuing a Bachelor's Degree in Biology. Her daughter is now in Kindergarten, and continues to attend Creative Beginnings when there is no school.[27] She stated "if I did not have help from Creative Beginnings, there would be no way that I would have been able to do this."[28]

She also testified regarding her daughter's experience with Plaintiff:

> I have three children. And, in comparison to my other two children, my daughter previous to her didn't go to preschool. And I -- and, seeing the difference in

[26] T. p. 71-72
[27] T. p. 77-79
[28] T. p. 79

> education and learning was amazing. My daughter at three years old could say all of her ABCs and count and [knows] colors and shapes. And -- and I'm blown away. Because, if I would have known that this was so important that she could -- that kids could develop this well this early, I would have tried to find a way to incorporate a preschool program in with my -- my previous daughter.[29]

When asked about attendance for her daughter when she was unable to pay, Schafer stated:

> In fact, because I go to school, and I don't hardly work, there's -- there were many times that I wasn't able to pay, and I wouldn't be able to pay until I got my loans from school. So I had a balance on my account, and they never turned my daughter away. They never said, well, you -- you owe $500, she can't come today. And they never charged me over-fees or anything. And then, when I got my school loans, I paid my balance, and we -- and we started over. And so I didn't have to -- luckily, I don't know anybody – any other program that would do that where I could have a balance, and they wouldn't turn a child away. Because if I don't -- if I can't go to school, then I can't better myself, and I can't go to school if I don't have a place for my daughter to go.[30]

On cross, Schafer conceded that Petitioner had not waived or forgiven any debt she owed them.

RESPONDENT'S ADMITTED EXHIBITS

The following Exhibits were admitted:

R-1 Articles of Incorporation of Petitioner

R-2 Petitioner's Parent Handbook

R-3 Updated Parent Handbook

R-4 Petitioner's tax returns

R-5 Total charge and credit summary

RESPONDENT'S CONTENTIONS

Respondent contends that because Petitioner does not give away its services, but rather, is reimbursed by government, or users of its services, it provides no gift and is therefore not exempt from property taxes. Accordingly, Respondent's undisputed contention as to the subject's assessed value for 2014 is $265,900, and a taxable value of $265,900. For 2015, Respondent contends that the subject's assessed value is $276,000, and the taxable value is at $265,900.[31]

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[29] T. p. 78-79
[30] T. p. 80
[31] No explanation was given as to why taxable value did not increase for 2015.

RESPONDENT'S WITNESS

Respondent's only witness was its assessor, Patricia DePriest. DePriest testified that she has been Respondent's assessor since 2004, and is licensed as a Level 3 assessor. DePriest testified that Bright Starts, the prior owner and operator of the building, did receive an exemption through 2010, but she removed it after she determined that Bright Starts received reimbursement from the Great Starts program, rather than allowing children to attend for free. Because Bright Starts was "getting paid one way or another,"[32] it was her opinion that they were not offering preschool/day care as a charity.[33]

FINDINGS OF FACT

1. Petitioner, per its Articles of Incorporation is a non-profit corporation.
2. Petitioner is recognized as a 501(c)(3) corporation by the Internal Revenue Service.
3. It is uncontested that Petitioner owns and occupies the subject property.
4. Petitioner operates a child care/preschool facility.
5. Petitioner's Articles of Incorporation provide in Article II:

> To provide day care for children between the ages of six weeks and twelve years old on a nonprofit basis as defined by MCL 450.2108, Michigan Nonprofit Corporation Act, so that parents or guardians of such children can be gainfully employed outside the home to provide such care in the form of planned and supervised activities, to provide such care to the general public without reference to race, color, creed, sex, or national origin.

6. Petitioner is a licensed day care.
7. Petitioner's mission statement in its Parent's Handbook states:

> Creative Beginnings Child Development Center, Inc. does not discriminate against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the organization.

8. Petitioner offers educational programs, including Head Start, Great Starts, and Teaching Strategies Gold.

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[32] T. p. 89
[33] Presumably, her position applies equally to the Petitioner.

9. Petitioner is used by Central Michigan University, Mid-Michigan Community College, and the Mt. Pleasant School District to provide hands on experience for its students in childhood education.
10. Twenty five percent of Petitioner's enrollees receive public assistance in some form.
11. There is a waiting list for enrollees.
12. Petitioner charges for its services, and/or is otherwise reimbursed for each child in its charge.
13. Per its tax returns, Petitioner pays modest salaries to its employees and to its executive director.[34]
14. Per testimony of its Executive Director, any profit made by Petitioner is reinvested in the facility.
15. Per testimony, Petitioner suffered a loss in 2011, and a profit in 2012, 2013 and 2014.
16. The State of Michigan Department of Education, and the Governor's office have put forward the Office of Great Start, which has been charged with ensuring that all children birth to age 8, especially those in highest need, have access to high-quality early learning and development programs and enter kindergarten prepared for success.[35]
17. The White House and Department of Education have made it a priority to expand early childhood learning and high quality preschool.[36]

CONCLUSIONS OF LAW

Petitioner has set forth arguments that it is entitled to an exemption under two statutes, the first being MCL 211.7z(1). This statute states:

> Property which is leased, loaned, or otherwise made available to a school district, community college, or other state supported educational institution, or a nonprofit educational institution which would have been exempt from ad valorem taxation had it been occupied by its owner solely for the purposes for which it was incorporated, while it is used by the school district, community college, or other state supported educational institution, or a nonprofit educational institution

[34] See Petitioner's 2014 Form 990, p. 7 found in Exhibit R-3, listing compensation of its officers and directors.
[35] Exhibit P-14b.
[36] Exhibit 14d.

> primarily for public school or other educational purposes is exempt from taxation under this act.

In support, Petitioner presented evidence that it made its property available to several qualifying schools for purposes of teacher training. The Tribunal finds that §7z(1) only applies in situations where Petitioner has already established an exemption for the property, and would lose that exemption by sharing it with a qualified school district because of lack of occupancy, or failing to occupy per its purpose. While this section allows an exempt entity to preserve its exemption, it does not provide an exemption to an entity that would not otherwise be exempt under another section of the General Property Tax Act. Accordingly, the Tribunal holds that Petitioner is not exempt under §7z(1). As the Tribunal also finds that Petitioner meets the occupancy requirement under MCL 211.7o(1), section 7z(1) has no application to the subject property in this appeal.

Petitioner is a non-profit organization recognized as such by the IRS under Section 501(c)(3) of the Internal Revenue Code.[37] While having this recognition is a prerequisite to receiving a charitable exemption from property taxation, it is only the starting point. Any determination by the IRS that Petitioner is a charity is not binding for property tax purposes, because the requirements under §501(c)(3) are different than under Michigan's General Property Tax Act[38] and case law.

MCL 211.7o(1) sets forth the requirements for exemption from property taxes as a charitable organization:

> 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.

Petitioner's ownership of the subject property is undisputed. Respondent's record card indicates that Petitioner purchased the property on June 14, 2011, and its assessor testified that she received a property transfer affidavit from Petitioner regarding that purchase.[39]

The second statutory test is whether or not Petitioner occupies the subject property. In addition to owning the subject, the Supreme Court in *Liberty Hill v. City of Livonia*[40] held that

[37] Exhibit P-4
[38] MCL 211.1 et seq
[39] T. p. 90
[40] 480 Mich 44, 58; 746 NW2d 282 (2008).

occupancy is a separate requirement from ownership, and defined occupancy as "at a minimum [to] have a regular physical presence on the property." Again, there is no dispute that Petitioner occupies the subject. Per Petitioner's Parent Handbook,[41] Petitioner is open year round, (except on certain listed holidays) from 6:30 am to 6:00 pm, Monday through Friday. The facility is run by Petitioner's employees.

The leading decision that sets forth certain tests to determine whether a corporation is a charitable institution is *Wexford Medical Group v. City of Cadillac*.[42] The *Wexford* factors 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.

While the Supreme Court describes six discreet factors, in practice these factors usually overlap and are often different facets of the same attributes. Nonetheless, an analysis of whether an organization qualifies as a charitable institution requires a discussion of each of these factors, which also provide a proper frame work in which to discuss Petitioner's relevant attributes.

In reviewing the first requirement found in *Wexford*, again, it is uncontested that Petitioner is a non-profit institution. Its Articles of Incorporation[43] and Restated Articles of Incorporation[44] indicate that Petitioner is organized as a non-profit. Its non-profit status was

[41] Exhibits R-2 and R-3
[42] 474 Mich 192, 215; 713 NW2d 734 (2006).
[43] Exhibits P-1a and b, and Exhibit R-1, all dated June 29, 2006.
[44] Exhibit P-2a, dated August 23, 2011.

accepted by the IRS, and Petitioner files non-profit tax returns.[45] Accordingly, the first *Wexford* Factor for qualifying as a charitable institution has been met.

The second Wexford Factor is discussed below. The third factor in *Wexford* states:

> (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.

Petitioner's policy regarding discrimination is set forth in its Restated Articles, "to provide such care to the general public without reference to race, color, creed, sex or national origin." However, the phrase "discriminatory basis" as used in Factor 3 is broader than the type of discrimination associated with violations of civil rights. Rather, it prohibits *any* discrimination among persons who need the particular type of charity offered. For example, the Court in *Wexford* approvingly discussed the holding in *Michigan Baptist Homes & Dev Co v City of Ann Arbor*,[46] involving the disparate treatment of two nursing homes. One nursing home (Hillside Terrace) screened applicants for good health and ability to pay, while the second (Bach Home) did no such screening. The Court in *Wexford* approved of its earlier decision finding that the granting an exemption to the Bach Home, while Hillside Terrace to be taxable did not violate Michigan's Equal Protection clause.[47]

In the present case, Petitioner's mission statement in its Parent's Handbook states:

> Creative Beginnings Child Development Center, Inc. does not discriminate against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the organization.

The Tribunal finds that this extremely broad antidiscrimination clause appears to meet the requirement of serving "any person who needs the particular type of charity being offered." This clause in the Handbook was buttressed in testimony by Dr. Hoffman, who stated that about a quarter of Petitioner's enrollees are in receipt of some type of assistance, and by April Schafer,

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[45] Exhibit R-4.
[46] 396 Mich 660; 242 NW2d 749 (1976).
[47] *Wexford*, p. 207-209

who testified that with minimal, and at times no income, she was able to enroll and keep her daughter in the program, while she pursued her GED, Associates degree, and now Bachelor's degree. Accordingly, the Tribunal finds that *Wexford* Factor 3 has been met by Petitioner.

Likewise, Factor 4 is also met. Factor 4 states:

> (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.

Here, it is undisputed that Petitioner brings people's minds or hearts under the influence of education. Petitioner provides assessments and educates infants, "wobblers," toddlers and preschoolers with age appropriate instruction or guidance. Both Michele Colores and Dr. Hoffman testified at length regarding the curriculum Petitioner provides.

Petitioner also entered into agreements with Central Michigan University,[48] Mid-Michigan Community College,[49] and Mt. Pleasant Area Technical Center[50] to provide supervision and training of students studying Education, thus allowing them to pursue credit for their diploma or degrees in the area of Early Childhood Development and Education. Petitioner provided this experience at no charge to the educational institutions or to the students.

Petitioner also assists people to establish themselves for life. Not only are the enrollees of Petitioner assisted to establish themselves to be ready for school, the parents of Petitioner's enrollees also receive assistance to establish themselves for life. Petitioner's Article II in in its Restated Articles of Incorporation specifically states as part of its mission, "so that parents or guardians of such children can be gainfully employed outside the home; . . . ." Not only is this a stated part of Petitioner's mission, there was ample testimony establishing that Petitioner is fulfilling this mission. Dr. Hoffman testified that "about a quarter of the children that [Petitioner] serve[s] are having a hard time financially."[51] As for a specific example, Petitioner offered the testimony of April Schafer. Ms. Schafer testified that because of the child care offered by Petitioner, she was able to complete her GED, Associates Degree, and work on

[48] Exhibit P-11
[49] Exhibit P-12
[50] Exhibit P-13
[51] T. p. 72

completing her Bachelor's Degree. She added that this would not be possible without the help of Petitioner.

Finally, as to Factor 4, Petitioner otherwise relieves the burden of government. Dr. Hoffman testified that for every dollar spent on early education, there is a return of $8.60. While one could argue that Petitioner increases the burden of government by encouraging participants to sign up for government programs, this argument was specifically rejected in *Wexford*. The Court stated:

> Respondent also unconvincingly argues that petitioner does not "lessen the burden of government," see *Retirement Homes, supra* at 349, 330 N.W.2d 682, because it enlists eligible patients in government-subsidized programs. While "lessening the burden of government" is a component of the definition of "charity" found in *Retirement Homes, supra*, respondent takes it out of context. This Court stated that a charitable institution is one that benefits 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.' " *Id.* (emphasis added; citation omitted). Implicit in the definition is that relieving bodies from disease or suffering *is* lessening the burden of government. In other words, petitioner does not have to prove that its actions lessen the burden of government. Rather, it has to prove, as it did, that it "reliev[es] their bodies from disease, suffering or constraint," which is, by its nature, a lessening of the burden of government.[52]

Just as the Petitioner in *Wexford* relieved the burden of government by easing suffering, Petitioner herein eases the burden of government by bringing people's minds or hearts under the influence of education, and by assisting people to establish themselves for life. Accordingly, Petitioner meets factor 4 under *Wexford.*

Wexford Factor 5 states:

> (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.

Respondent introduced Schedule A from Petitioner's 2014 Form 990 tax return,[53] which details income from grants, contributions and the like from gross receipts, to show that the sums received by Petitioner were overwhelmingly from tuition charges, rather than charitable grants. Respondent also elicited testimony from Michele Colores that the facility made a profit in 2012

[52] *Wexford*, p. 219
[53] Exhibit R-3, Schedule A p. 3, attached to 2014 Form 990.

and 2013, after coming off a loss from 2011. Colores testified that any profit was reinvested back into the facility to put in a playground and replace the carpet. The Court in Wexford had the following to say about charities making a profit:

> Respondent argues that petitioner's goal of profitability negates its claim that it is a charitable institution. We find that argument hollow. Petitioner's bylaws do not allow any individual to profit monetarily from the petitioner's clinic; thus, "profitability" has a different meaning for this institution than it would for an entity whose goal it was to reward its agents or shareholders with profits. And the idea that an institution cannot be a charitable one unless its losses exceed its income places an extraordinary—and ultimately detrimental—burden on charities to continually lose money to benefit from tax exemption. A charitable institution can have a net gain—it is what the institution does with the gain that is relevant. See *R. B. Smith Mem. Hosp., supra* at 36, 41, 291 N.W. 213 (1940). When the gain is invested back into the institution to maintain its viability, this serves as evidence, not negation, of the institution's "charitable" nature.[54]

Respondent did not show, or indeed even argue that Petitioner's charges were in excess of what is needed for successful maintenance. In fact, Petitioner's 2014 Form 990, listing compensation of its officers and directors shows only two officers receiving a salary, and neither salary could plausibly be argued as being excessive. Colores also testified that the amount of wages Petitioner is able to pay its teachers is below the poverty level, and that the charges were necessary in order to keep the doors open. Clearly, no one is getting rich off of Petitioner's activities. Accordingly, Petitioner meets *Wexford* Factor 5.

Wexford factor 6 states as follows:

> (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.

Factor 6 is central to the holding of the *Wexford* appeal, where the Court explained that MCL 211.7o has no quantitative test. The Court reversed the holding of the Court of Appeals, which based its finding that Wexford Medical was not charitable upon the fact that it only gave free care to 13 patients out of 44,000 patients, and a total of $2,400 worth of free care to these 13 patients out of an annual budget of $10,000,000.[55] The Court stated:

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[54] *Wexford*, p. 217-218
[55] *Wexford*, p. 197

> Because there is no statutory language that precludes finding petitioner exempt as a charitable institution, and because exempting petitioner on that basis fully comports with the reasoning of our previous cases, we hold that petitioner does in fact qualify for that exemption. In refusing to grant the exemption, the Tax Tribunal adopted a wrong principle and misapplied the law by failing to distinguish *ProMed Healthcare v. City of Kalamazoo,* 249 Mich.App. 490, 644 N.W.2d 47 (2002), and by focusing only on the amount of free medical services plaintiff provided. Instead, the tribunal should have considered plaintiff's unrestricted and open-access policy of providing free or below-cost care to all patients who requested it.[56]

Respondent argues that Petitioner's tax returns reflect that only an extremely small portion of total revenue originated from grants, with the balance coming from the persons enrolling their child with Petitioner.[57] Respondent also pointed out that uncollected balances were also an extremely small percentage of its revenues.[58] Respondent highlights Petitioner's tuition policy, which allows it to terminate its services for non-paying customers after two weeks, and to turn over accounts that are four weeks delinquent.[59] Finally, as to this factor, Respondent notes that while Petitioner may take in children coming from families on assistance, it is the family that must apply for the assistance. Petitioner itself does not provide free or reduced fee child care/preschool to anyone.

The threshold as discussed in *Wexford* in articulating Factor 6 is quite low. Wexford Medical only gave out $2,400 in free care out of a budget of $10,000,000. (0.024% of its budget). Here, there was some evidence of reduced fee child care in that Petitioner pays a blended fee for children receiving, but not enrolled in the Great Start Readiness Program.[60] There was also testimony from April Schafer that she was allowed to keep her child in Petitioner's program and carry a balance while she pursued education to better herself. Accordingly, the Tribunal finds that monetarily, Factor 6 has been met by Petitioner in that there was at least some monetary gift involved. As to the question as to whether the overall nature of Petitioner is charitable, that must be answered in conjunction with Factor 2 below.

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[56] *Wexford*, p. 195-196.
[57] Page 3 of Schedule A to Petitioner's 2014 990 return shows that the amount of grants for each year were a very small percentage of Petitioner's support. The percentage of grants to total support are 1.88, % 0.40%, 0.72%, and 5.28% for 2011, 2012, 2013 and 2014 respectively.
[58] See Exhibit R-5, Petitioner's income statements for 2013 and 2014.
[59] Exhibit R-3.
[60] T. p. 37

The closest question in this appeal is whether or not Petitioner meets Factor 2, which touches upon the other five factors, has been met. Factor 2 (deceptively), simply states as follows:

> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.

Respondent cites several cases in support of its argument that Petitioner is not organized chiefly for charity. Respondent cites *Wexford*, where everyone, regardless of ability to pay, is given treatment. Similarly, it cites *Moorland Twp. v Ravenna Conservation Club,*[61] for the proposition that the club was a charitable institution because the club's activities constituted a gift to the general public without restriction. The club's property was always open to the public at no charge; it offered hunter-safety classes at no charge. Respondent contrasted this case to *Michigan United Conservation Clubs v Lansing Twp,*[62]where similar classes and access offered to the general public in *Moorland Twp* were not generally available to non-club members, and therefore, did not benefit an indefinite number of persons. Importantly, the Supreme Court found that the Petitioner's conservation activities were of benefit to an unlimited number of persons.

Respondent also cites two other unpublished cases involving gun clubs, where the Tribunal and or the Court of Appeals held that the Petitioners failed to qualify as exempt.[63] In both cases, it was determined that the benefits were primarily for their members, and that any benefit to the public as a whole was de minimis. In the same vein, Respondent cites another unpublished case involving an ice arena. In *Involved Citizens Enterprises v. East Bay Twp,*[64] the Court of Appeals affirmed the Tribunal's finding that the ice rink, which was open to the public, organized as a non-profit and charged a small fee for usage was not charitable. The Court of Appeals reasoned, "Petitioner's argument that it provides a gift to the general public by providing recreational opportunities at a "discount" is not one of the benefits of charity contemplated by the Court in *Wexford Medical*." While Tribunal decisions and unpublished

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[61] 183 Mich App 451; 455 NW2d 331 (1990).
[62] 423 Mich 661; 378 NW2d 737 (1985)
[63] The gun club cases cited are *North Ottawa Rod & Gun Club v. Grand Haven Twp*, unpublished opinion per curiam of the Court of Appeals issued August 21, 2007 (Docket No, 268308); *Bridgeport Gun Club v. Bridgeport Twp*, 19 MTT 59 (2011).
[64] Unpublished opinion per curiam of the Court of Appeals issued October 29, 2009 (Docket No. 284706).

Court of Appeals cases are not binding on the Tribunal, it is important to note that the non-exempt gun club and ice arenas in the above cases are distinguishable from the subject appeal in that all were chiefly organized for recreation. The "gift" of an ice arena or a happy hunting ground is different in kind and character from the services provided by Petitioner.

Respondent also cites *Harmony Montessori Center v. City of Oak Park* (on remand)[65] for the proposition that a Montessori school that that gives a discount or encounters a loss in a given year did not establish an overall charitable purpose. Respondent fails to mention that this decision has been appealed a second time to the Court of Appeals, where it is currently pending.[66] This case, involving a Montessori school is not binding, and is distinguishable to the present appeal. In *Harmony*, the Tribunal found that the school charged market rates, and did nothing special to help needy persons. In the present case, there was testimony as to purpose and practice of Petitioner to help economically disadvantaged persons.

Respondent does cite two cases involving a preschool, and in both cases, Petitioner was successful. *Association of Little Friends v. City of Escanaba* [67]was cited by Respondent for the proposition that a child care/preschool does not qualify for an educational exemption. While the Court of Appeals did so hold, Respondent failed to mention that the case was remanded back to the Tribunal to answer the question as to whether or not it qualified for a charitable exemption. Respondent also cites *Allen Creek Preschool v. City of Ann Arbor* [68] for the proposition that preschool does not fit into Michigan's general scheme of education and is therefore not entitled to an educational exemption. While true, Respondent fails to mention that the only issue as to whether the preschool qualified as a charity was the issue of occupancy, which is not an issue in the present case. The Tribunal has also decided *Genesee Christian Day Care v. City of Wyoming*,[69] which found that Petitioner was not exempt from property taxes because "day care recipients seem to be chosen based upon their ability to pay in full, by some method or another." In the present case, choosing based upon the ability to pay is at odds with the evidence presented to the Tribunal. The unrebutted testimony of Michele Colores, Dr. Holly Hoffman and April Schafer, as well as Petitioner's Articles of Incorporation and Parent Handbook all show that

[65] MTT Docket No. 370214 (March 20, 2015)
[66] Court of Appeals Docket No. 326870
[67] 138 Mich App 302; 360 NW2d 602 (1984)
[68] 22 MTT 540 (2013)
[69] 20 MTT 463 (2011).

Petitioner's mission is to help parents better themselves by providing educational day care. Further, the evidence presented, including Exhibits P-14B Care through Office of Great Start, P-14C Great Start Readiness Program, P-14D, Whitehouse-President's Early Learning Initiative, P14-E Partnership for America's Economic Success and P-14F, National Poll on Early Childhood Education, P-16B Curriculum and P-16D Teaching Strategies Gold Assessment Objectives show the benefit not only to the parent trying to get an education, but the children in Petitioner's program, and society at large in having children that are much more likely to succeed in school and life.

The core issue in the present case is whether Petitioner is giving a gift, when in fact, it is paid for its services, "one way or another." In *Wexford*, the Court approvingly cited *Huron Residential Services for Youth v. Pittsfield Twp.*[70] for the proposition that "the fact that an institution receives government reimbursements has little bearing on the analysis because . . . the beneficiary . . . receives a gift.[71]"

> The Tax Tribunal was of the opinion that petitioner offered no gift because the state pays it a per diem rate based upon its costs. This per diem funding constitutes more than 99% of petitioner's funding. The Tax Tribunal was persuaded by respondents' argument that petitioner is a "government contractor" and should be viewed as a business. We cannot agree with this analysis. The Tax Tribunal found that petitioner did not discriminate on the basis of ability to pay and had accepted youths without any reimbursement. However, as petitioner's witness explained, virtually all troubled youths in need of a residential treatment program have contacts with the state and state funding is available.[72]

Similarly, Petitioner receives reimbursement from the State of Michigan for families that cannot pay. Under the analysis in *Huron Residential Services*, the children and their families receive a gift from Petitioner, even though Petitioner is paid by the state, or another source. Moreover, the type and quality of that early education, as shown by the enumerated evidence is a gift to the children, the parents, and society as a whole. Finally, through its placement agreements with Central Michigan University, Mid-Michigan Community College and the Mt. Pleasant Area Technical Center school district, Petitioner also participates in the training of future teachers, which also benefits the public at large. Accordingly, the Tribunal finds that Petitioner is

[70] 152 Mich App 54; 393 NW2d 568 (1986)
[71] *Wexford*, p. 217
[72] *Huron Res*, p. 62

organized chiefly if not solely for charity, its overall nature is charitable and accordingly, meets *Wexford* Factors 2 and 6.

Finally, MCL 211.7o (1) contains a third requirement of "while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated." As the above analysis indicates, Petitioners' purposes were to run a child care/preschool "so that parents or guardians of such children can be gainfully employed outside the home." As the Supreme Court observed in *Wexford*, "[n]or has respondent shown any evidence that petitioner is not actively pursuing its mission to the exclusion of any noncharitable activities."[73] Likewise in the subject case, Respondent failed to produce any evidence that Petitioner is pursuing a different mission from its stated goals. Accordingly, the Tribunal finds that Petitioner is entitled to an exemption under MCL 211.7o(1).

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax years at issue are as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER 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 true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the 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

[73] *Wexford*, p. 216.

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: David B. Marmon

Entered: February 26, 2016