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

Building Corporation of the Detroit
Electrical Industry Apprentice & Journeyman
Training Fund,
Petitioner,

v MTT Docket No. 16-000831

City of Warren, Tribunal Member Presiding
Respondent. Steven H Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR RECONSIDERATION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

On June 1, 2017, Respondent filed a motion requesting that the Tribunal reconsider the order entered in the above-captioned case on May 19, 2017, which denied its motion for summary disposition. In the motion, Respondent states that the Tribunal was palpably misled by the pleadings, which failed to delineate the difference between Petitioner, the owner of the subject property, and the trust that operates the purported educational institution at issue. When the entities are separated, it is clear that Petitioner does not meet the requirements of MCL 211.7n and Respondent is entitled to summary disposition in its favor. Petitioner is not an educational institution and it does not occupy the subject property; its only purpose is to hold the real property for the trust as a separate legal entity and the only actual presence in the building is by the trust through its operation of the claimed exempt educational institution. The Court of Appeals has made clear that the purposeful creation of two distinct corporate entities must be respected and that in order for property to be exempt, the specific entity that holds title to the property must meet the requirements for the exemption at issue.[1]

Petitioner filed a response to the motion on June 16, 2017.[2] In the response, Petitioner states that Respondent has failed to demonstrate that the Tribunal's order was in error. The Tribunal and the parties were well aware of the separate status of Petitioner and the trust, as conceded in Respondent's motion for reconsideration. Thus, the Tribunal was not relying on imperfect and flawed information; all of the relevant facts were before it, and it implicitly rejected the argument made here. More importantly, despite the fact that the city was aware of the separate status of Petitioner and the trust, it never argued to the Tribunal that this status prevented it from finding that Petitioner was entitled to the requested exemption. And by not making this argument in its

[1] *Trinity Health-Warde Lab, LLC v Charter Twp of Pittsfield*, 317 Mich App 629; __NW2d__ (2016).
[2] The Tribunal entered an order on June 6, 2017, permitting the filing of a response, as provided by TTR 257(2).

motion for summary disposition, Respondent waived it.[3] Further, the Court of Appeals in *Trinity Health* concluded that the Tribunal erred when it allowed the Lab to use the tax-exempt status of its parent corporation when it was not itself a nonprofit entity; it did not go beyond this finding as Respondent contends and holds that "the purposeful creation of two distinct corporate entities must be respected and that in order for property to be exempt the specific entity that holds title to the property must meet the requirements for the exemption at issue." The instant case is much closer to that in *National Music Camp v Green Lake Twp*,[4] as Petitioner and the trust are essentially one organization. The only difference is that here, both organizations are not incorporated because the trust cannot incorporate as a result of federal law. Thus, it was required to establish a building corporation in order to apply for tax exempt status for the real property that it still controls through the corporate structure.

The Tribunal, having given due consideration to the motion, response, and the case file, finds that Respondent has demonstrated a palpable error relative to the May 19, 2017 order that misled the Tribunal and the parties and that would have resulted in a different disposition if corrected.[5] Though the Tribunal agrees with Petitioner that *Trinity Health* is not on point,[6] there are three basic elements that must be satisfied in order to qualify for an exemption 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 theater, library, educational, or scientific institution; and (3) The exemption exists only when the buildings and other property at issue are occupied by the claimant solely for the purposes for which the claimant was incorporated.[7] In the instant appeal, Building Corporation of the Detroit Electrical Industry is the exemption claimant, and it meets only one of the above criteria—ownership. Petitioner 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 occupied by the Apprentice and Journeyman Training Trust of the Electrical Industry, Detroit, Michigan, which may or may not qualify as an educational institution within the meaning of the statute. Petitioner cites *Nat'l Music Camp* for the proposition that the two entities are essentially one organization, and that it is therefore entitled to the requested exemption, but Petitioner's reliance on this case is misplaced. As has been recognized by the Court of Appeals, *Nat'l Music Camp* "involved two exempt entities, using the same property for a common educational purpose."[8] This was key to the Courts' decision in that case, as it reasoned that "the purposes, officers, directors,

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[3] *Charbeneau v Wayne Cty Gen Hosp*, 158 Mich App 730; 405 NW2d 151, 152 (1987).
[4] *Nat'l Music Camp v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977).
[5] See MCR 2.119.
[6] Despite the framing of the issue in that case by the Court of Appeals as the extension of tax-exempt status from one organization to a related entity, the issue actually related to ownership. The petitioner, a wholly-owned subsidiary of Trinity-Health Michigan, created specifically for the purpose of purchasing, financing, and holding the property at issue, argued that Trinity was the true owner of the property by virtue of its complete and total control over petitioner, and inasmuch as Trinity, a nonprofit hospital previously determined by the Tribunal to be a charitable institution, also occupied the property for the charitable purposes for which it was incorporated, i.e., operating a hospital and providing public health services, the property was entitled to exemption under MCL 211.7o and MCL 211.7r. Petitioner makes no such argument in this case, recognizing that the trust, as a non-incorporated entity, is not eligible for an exemption under MCL 211.7n.
[7] *Michigan Baptist Homes & Development Co v City of Ann Arbor*, 396 Mich 660, 670; 242 NW2d 749 (1976) citing *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944) and *Gull Lake Bible Conference Assn v Ross Township*, 351 Mich 269, 273; 88 NW2d 264 (1958).
[8] *Czars, Inc v Dep't of Treasury*, 233 Mich App 632, 643; 593 NW2d 209 (1999).

management and location of the four Interlochen educational corporations [were] so comingled, interwoven and connected that they [were] in reality and for all practical purposes one corporation."[9] Here, as in the case of *Czars, Inc v Dep't of Treasury*,[10] Petitioner and the trust were formed for two distinct purposes; the trust was established "to defray the costs of training apprentice and journeyman electricians," while Petitioner's sole purpose is to "take and hold title to real property of the Trust . . . ."[11]

Further, the Tribunal did not "implicitly" reject Respondent's argument in the rendering of its proposed order denying its motion for summary disposition as Petitioner contends. Despite the fact that the motion contained a single statement indicating that "Petitioner is a title holding company for a union trust set up to train apprentices and retain journeymen in the given field represented by the union," Respondent failed to raise any issue in that regard, and consistently referred to the entities in the singular: "Petitioner owns real property that it uses to train and retrain the apprentices and journeymen," "Petitioner's training facility operates on a full-time basis," "Petitioner has approximately 5% of nonunion apprentices," "Petitioner is registered with the United States Department of Labor Bureau of Apprenticeship and Training," "Petitioner offers apprenticeship programs for electrician/inside wireman; electrician telecommunications installer technician; and electrician/residential wireman," "Petitioner is a tile holding company for a union trust set up to train apprentices and retain journeymen in the given field represented by the union," etc. Consequently, the pleadings are not the only filings that failed to delineate the difference between Petitioner, the owner of the subject property, and the trust that operates the purported educational institution at issue. Indeed, Respondent appears to have itself failed to recognize this fact and the impact of the same until after the issuance of the order denying its motion for summary disposition. Petitioner's contention that this failure results in waiver of the argument is without merit, however, as the Court of Appeals declined to decide the merit of the plaintiff's allegations in *Charbeneau* because "the grant or denial of a motion for reconsideration rests within the discretion of the trial court."[12]

Given the above, there is no genuine issue of material fact with respect to Petitioner's eligibility for exemption. Petitioner does not meet the requirements of MCL 211.7n and Respondent is entitled to judgment as a matter of law. Therefore,

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

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

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[13] To the extent that the final level of assessment for a given year has not yet

[9] *Nat'l Music Camp*, 76 Mich App at 614.
[10] *Czars*, 233 Mich App 632.
[11] Affidavit of Joseph Pawlick.
[12] *Charbeneau*, 158 Mich App at 733.
[13] See MCL 205.755.

been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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

This Final Opinion and Judgment resolves all pending claims in this matter and closes this 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.[14] 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.[15] 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.[16] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[17]

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

[14] See TTR 261 and 257.
[15] See TTR 217 and 267.
[16] See TTR 261 and 225.
[17] See TTR 261 and 257.

21 days after the entry of the final decision, it is an "appeal by leave."[18] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[19] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[20]

By _____Steven H. Lasher_____

Entered: June 29, 2017
ejg

[18] See MCL 205.753 and MCR 7.204.
[19] See TTR 213.
[20] See TTR 217 and 267.