

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

Dearborn Heights Montessori Center, Inc., dba: Livonia
Montessori School
Petitioner,

v

MTT Docket No. 15-000568

City of Livonia,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Dearborn Heights Montessori Center, Inc. dba: Livonia Montessori School (“Livonia Montessori”), appeals the ad valorem property tax assessment levied by Respondent, City of Livonia, against Parcel No. 46-012-01-0246-000 for the 2015 and 2016 tax years. Petitioner contends that the subject property is exempt from taxation pursuant to MCL 211.7o as it is a charitable organization. Michael S. Hale, Attorney, represented Petitioner, and Eric S. Goldstein, Attorney, represented Respondent. A hearing on this matter was held on September 11, 2017. Petitioner’s sole witness was Kay Neff and Respondent did not call witnesses, but participated in cross-examination and offered two exhibits into evidence.

Respondent had previously filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(10), which tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact, therefore, the moving party is entitled to judgment as a matter of law.¹ In reviewing Respondent’s Motion and Petitioner’s Response, the Tribunal found there were genuine issues of fact, therefore Respondent’s Motion was denied and a hearing of this matter scheduled. Both parties in the Motion and Response presented arguments pursuant to *Wexford Medical Center v City of Cadillac*,² wherein the Supreme Court presented the test, including the examination of six

¹ See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

² *Wexford Medical Center v City of Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006).

factors, for determining if an organization is a non-profit charitable institution pursuant to MCL 211.7o. The Tribunal found that it lacked relevant information regarding four of the factors put forth in *Wexford*, which must be met in order to qualify for exemption, and as such, ordered an evidentiary hearing.

Based on the evidence, testimony, and case file, the Tribunal finds that the subject property is not exempt from taxation for the 2015 and 2016 tax years.

As such, the Tribunal finds that the subject property's true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") for the 2015 and 2016 tax years are unchanged as expressed on the tax rolls:

Parcel Number: 46-012-01-0246-0000

Year	TCV	AV	TV
2015	\$363,720	\$181,860	\$181,860
2016	\$365,460	\$182,730	\$182,400

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is exempt from taxation pursuant to MCL 211.7o as it is a non-profit institution pursuant to section 501(c)(3) of the Internal Revenue Code. Petitioner claims it is organized chiefly, if not solely for charity as its mission is to educate students under the Montessori Method and it exists primarily, if not exclusively, to provide education and an educational environment in the community, on a non-profit basis. Petitioner is a branch of Dearborn Heights Montessori Center ("DHMC"), which has three schools, located in Dearborn-Heights, Plymouth-Canton and subject school located in Livonia.

Petitioner contends it offers a formal Tuition Assistance Program which commences with an evaluation by FAST (Financial Aid for School Tuition), an independent tuition assistance division of "Independent School Management." Subsequently, additional internal consultation is completed which results in assistance to virtually every family that applies. Further, it offers multiple child discounts and discounts to families who prepay or pay tuition in full. Petitioner also contends it offers day care and a latch key program, for children that must remain at Livonia Montessori, before or after the school day, for a flat rate, which does not provide for a profit.

Petitioner contends its tuition does not offset its per pupil educational costs nor does it require its families to make up the difference between tuition rate and per pupil cost as funds are

taken directly from its operating budget, currently resulting in a deficit to its budget. Petitioner contends it provides its charitable, educational function on a non-discriminatory basis and claims the amount of charity it gives is irrelevant.

PETITIONER'S ADMITTED EXHIBITS

P-2: Livonia Montessori School Website
P-3: IRS Tax Exempt Letter
P-5: Restated Articles of Incorporation
P-7: DHMC Financials Ended December 31, 2014
P-8: DHMC Financials Ended December 31, 2015
P-10-2: Livonia Montessori Tuition Assistance Plan
P-11-2: Plymouth Canton Montessori School Tuition Assistance
P-12: Dearborn Heights Montessori Tuition Assistance
P-13-2: Total Tuition Assistance – Combined Sites
P-14: 2015-2016 Livonia Montessori Tuition Rates
P-15: 2014-2015 Livonia Montessori Tuition Rates
P-16 -1 and P-16-2: 2012-2013 Livonia Montessori Tuition Rates
P-17 March 2, 2015 Letter to Dearborn Heights Montessori Center

RESPONDENT'S AMITTED EXHIBITS

R-25 Financial Aid for School Tuition ("FAST") Application
R-26 Parent User Guide for FAST Application

FINDINGS OF FACT

1. Petitioner is a non-profit, private, tuition based, Montessori School. It also offers before and after school care, including a "latch key program," for extended day students who require care beyond the end of the school day.
2. The children educated and cared for at Livonia Montessori are ages 2 years 9 months to 6 years of age.
3. Petitioner has owned the current Livonia site since April 2012 and began occupying the current Livonia site as of December 26, 2012.
4. During the 2014-2015 and 2015-2016 tax years, Petitioner's tuition ranged from \$5,910, for half-day, pre-school and kindergarten programming, to \$11,520 for full day programming.
5. Petitioner offers reduced price tuition to some students. Financial information is first submitted to the FAST program for an unbiased aid recommendation.

6. However, despite FAST recommendations, Ms. Kay Neff, Head of School along with the Assistant Head of School, sometimes reduce tuition, defer tuition or set up payment plans for changes in financial circumstances after FAST application or during the school year.
7. Financial aid for a subsequent year, may not be received until payment for the applicant's portion of the previous year's tuition has been received.
8. There are 31 students enrolled at Livonia Montessori School and its building is well maintained and esthetically pleasing.
9. In the 2013-2014 school year, a \$2,000 tuition grant was given to one Livonia Montessori Student, in 2014-2015, a \$3,000 tuition grant was given to one Livonia Montessori Student and in 2015-2016, and a \$3,865 tuition grant was given to one Livonia Montessori Student.
10. The bulk of Livonia Montessori's operating budget comes from tuition and fees. There are occasional gifts which go into a brokerage account for capital emergencies.
11. Tuition for Livonia Montessori Students was raised by the school for the 2014-2015 and 2015-2016 tax years.
12. Livonia Montessori does not have a scholarship fund, development fund, development director and does not participate in fundraising at the Livonia location. Petitioner's financial situation caused it to run with a deficit, during the tax years in question.

CONCLUSIONS OF LAW

Charitable Exemption Pursuant to MCL 211.7o

The general property tax act provides that "all property, real and personal, within the jurisdiction of this state, *not expressly exempted*, shall be subject to taxation."³ Exemption statutes are subject to a rule of strict construction in favor of the taxing authority.⁴ The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:

³ See MCL 211.1 (emphasis added).

⁴ *Retirement Homes v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982), *APCOA, Inc v Dep't of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995).

[I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and *an alleged grant of exemption will be strictly construed* and cannot be made out by inference or implication but *must be beyond reasonable doubt*. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant.⁵

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax.⁶

It is also well settled that a petitioner seeking a tax exemption bears the burden of proving that it is entitled to the exemption. The Michigan Court of Appeals, in *ProMed Healthcare v City of Kalamazoo*, discussed Justice Cooley's treatise on taxation and held that:

[T]he *beyond a reasonable doubt* standard applies when the petitioner attempts to establish that an entire class of exemptions was intended by Legislature. However, the *preponderance of the evidence* standard applies when a petitioner attempts to establish membership in an already exempt class.⁷

In the instant case, Petitioner asserts that the subject property is exempt from property taxation because Petitioner is a charitable institution under MCL 211.7o. Charitable institutions have already been recognized as exempt classes. Because Petitioner is attempting to establish membership in the class, the preponderance of evidence standard applies. Also, it appears that Petitioner is a non-profit Michigan corporation and is designated as a federal 501(c)(3)

⁵ *Michigan Bell Telephone Co v Dep't of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, Taxation (4th ed.), §672, p. 1403.

⁶ *Michigan Bell*, 229 Mich App at 207.

⁷ *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002) (emphasis added).

organization exempt from taxation;⁸ however, the Michigan standard for exemption is more rigorous than the federal standard: “the fact that a petitioner may qualify for tax exempt status under Federal law, i.e., Section 501(c)(3) of the Internal Revenue Code, creates no presumption in favor of an exemption from property taxes.”⁹ See also *American Concrete Institute v State Tax Comm*, which states: “The institute’s exemption from Michigan ad valorem tax is not determinable by its qualification as an organization exempt from income tax under section 501(c)(3) of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act.”¹⁰

Both Petitioner and Respondent have presented or referred to the relevant statute and case law regarding a charitable exemption from taxation under MCL 211.7o. The Tribunal finds that MCL 211.7o states in pertinent part:

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.

In *Wexford*, the Supreme Court presented the test for determining if an organization is a charitable one under MCL 211.7o and required that:

1. the real estate must be owned and occupied by the exemption claimant;
2. the exemption claimant must be a nonprofit charitable institution; and
3. the exemption exists only when the building and other property thereon are occupied by the claimant solely for the purpose for which it was incorporated.¹¹

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

In its Order Denying Respondent’s Motion for Summary Disposition, the Tribunal found Petitioner met this factor. Petitioner has owned the current Livonia site since April 2012 and began occupying the subject site as of December 26, 2012. As such, it is the owner, and occupant, of the property relating to the 2015 and 2016 tax years.

The exemption claimant must be a non-profit charitable institution

⁸ Petitioner’s Brief, Exhibit 18.

⁹ *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748, 752 n 1; 298 NW2d 422 (1940).

¹⁰ *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968).

¹¹ *Wexford*, 474 Mich at 203.

Pursuant to the second requirement under MCL 211.7o, the claimant must be a non-profit charitable institution. In determining whether an organization is charitable is to understand the definition of “charity.” The Michigan Supreme Court established the following definition of “charity” as such:

[C]harity . . . is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.¹²

In order to determine whether Petitioner is entitled to a property tax exemption under MCL 211.7o, Petitioner 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.¹³ The Court in *Michigan United Conservation Clubs v Lansing Twp* (“MUCC”), held that “[t]he proper focus in this case is whether MUCC’s activities, *taken as a whole*, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.”¹⁴ In *Michigan Baptist Homes v City of Ann Arbor*, the Michigan Supreme Court stated that “exempt status requires more than a mere showing that services are provided by a nonprofit corporation.”¹⁵ 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.”¹⁶

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*, that six factors must be considered in determining whether an entity is a charitable institution for purposes of MCL 211.7o. A claimant must meet all six of these tests in order to qualify as a nonprofit charitable institution. A failure

¹² *Retirement Homes*, 416 Mich 340 at 348–349, quoting *Jackson v. Phillips*, 96 Mass (14 Allen) 539 (1867) and other cases subsequently adopting the same definition. *Retirement Homes*, 416 Mich App at 348-349 n. 14.

¹³ See *Michigan United Conservation Clubs v Lansing Township*, 423 Mich 661; 378 NW2d 737 (1985).

¹⁴ *Id.* at 673 (emphasis added).

¹⁵ *Michigan Baptist Homes v City of Ann Arbor*, 396 Mich 660, 670; 242 NW2d 749 (1976).

¹⁶ *Id.* at 671.

to meet any of the six tests disqualifies a claimant from being considered a charitable institution and receiving a property tax exemption under MCL 211.7o. The tests 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.¹⁷

An analysis of whether an organization qualifies as a charitable institution requires a discussion of each of these factors.

(1) A “charitable institution” must be a nonprofit institution.

It is uncontested between the parties that Petitioner meets this first test.

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

(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.

The Tribunal finds there is overlap between factors two and four and as such, it will discuss them together. Pursuant to factor four, the Tribunal finds Petitioner brings hearts and minds under the influence of education. Petitioner’s witness, Kay Neff, Head of School, Livonia Montessori, testified the subject property is a Montessori school, a type of educational institution which utilizes the Maria Montessori Method to teach its students, ages 2 years, 9 months to six years of age.¹⁸ The method helps children learn individually based on their interests and their

¹⁷ *Wexford*, 474 Mich 192, 215.

¹⁸ Petitioner’s Exhibit 2 at 11. (“P2-11”).

readiness to learn, it builds character, citizenship, tolerance, self-respect and teaches children to care of the earth.¹⁹ Further, the method teaches abstract concepts through kinesthetic learning for the youngest children as well as “traditional subjects from the time the children very young including language, reading, math, geography, science”²⁰ Mixed-age classrooms allow younger children to learn from older children and adult (teacher) models. In its Order denying Respondent’s Motion for Summary Disposition, the Tribunal found Montessori education may be a highly specialized form of education that may not relieve a burden of government. However, after carefully listening to Ms. Neff’s testimony and examining Petitioner’s exhibits and the case file, the Tribunal finds Montessori education should not be separated from traditional, public school education, with regard to a *charitable exemption from taxation*, as it also brings hearts and mind under the influence of education, and as such, relieves a governmental burden, pursuant to factor four.

In its “Rider to Restated Articles of Incorporation. (“Rider”) ²¹ Petitioner’s purposes are stated to be, [t]o provide a non-profit day care center for children as defined in Sections 501(c)(3) and 501(k) of the Internal Revenue Codeto enable individuals of the general public who have children to be gainfully employed.” Also “to provide educational programs for children using the Montessori methods of instruction”²² Pursuant to IRS Publication 557, for federal income tax purposes, “educational purposes includes providing for care of children away from their homes if substantially all the care provided is to enable individuals to be gainfully employed and the services are available to the general public.” As such, despite Michigan’s more stringent requirements relating to a property tax exemption, the Tribunal finds any day care and latch key program, in addition to Montessori education provided by Petitioner, to children 2 years 9 months though 6 years also fits within its educational purposes.²³ Further the children 2 years 9 month through 6 years continue to learn, in a modified Montessori classroom, during day care and latch key options.²⁴

¹⁹ Transcript (“Tr”) at 8, 18-19. P2-6.

²⁰ Tr at 16.

²¹ See Petitioner’s Exhibit 5, (“P5”)

²² *Id.*

²³ 2 years 9 months to 6 years are the ages of children accepted specifically at Livonia Montessori. See P2-11. Petitioner provides day care and latch-key programs before and after classes. See P2-11.

²⁴ See P-14, P-15.

With regard to factor two, the Tribunal finds that while Petitioner occasionally provides reduced price tuition, it is not operated chiefly, if not solely, for charity. As a private school, Petitioner charges tuition for its services. It also provides financial assistance to those families wishing to enroll their children in the program, but lack the resources to pay full-price tuition.²⁵ As a result of the financial assistance, the school runs with a deficit and Ms. Neff testified, “we don’t try to make up the deficit. What we try and do is going forward we try to make tuition be more in line and have our practices more in line with being in the black.”²⁶ Ms. Neff testified, “I’m a terrible asker and so we never really established a development fund for scholarships.”²⁷ When inquired, by Petitioner’s counsel, “Where does the money come from that so-called fund tuition assistance?” Ms. Neff answered, “Well, it actually doesn’t come from anywhere. It’s just money we don’t collect.”²⁸ The Tribunal queries, if no donations are solicited, and there is no fund established to provide scholarships, where does the money come from to provide those scholarships? The only reasonable explanation, as confirmed by Ms. Neff, is “going forward we try to make tuition be more in line and have our practices more in line with being in the black.”²⁹ She testified, “Almost all of it [revenue] comes directly from tuition or from fees”³⁰ The Tribunal finds when comparing 2014-2015 tuition to 2015-2016 tuition, the tuition rates went up by, for example, \$290 per child participating in the half-day, one payment option, and \$500 per child participating in full-day, one payment option.³¹ Otherwise, with no donations, no scholarship fund, and a well-maintained and esthetically attractive facility,³² where does the money come from to stay afloat?

The *Court in Harmony Montessori Center v City of Oak Park* remanded the matter to the Tribunal in part to seek additional facts with regard to its determination that the property was not exempt from taxation as the property of a charitable institution. The Court found:

²⁵ Tr at 61.

²⁶ Tr at 51.

²⁷ Tr at 58.

²⁸ Tr at 57.

²⁹ Tr at 51.

³⁰ Tr at 27.

³¹ See P-14 and P-15, “Livonia Montessori Tuition Schedule.” Tuition information for the 2013-2014 tax years was not provided.

³² Tr at 27; Tr at 109. Ms. Neff testified, “that’s also a very significant part of Montessori philosophy, aesthetics, the beauty of the environment, the beauty of the materials, the beauty of the materials and the spaces that the materials are in.” Tr at 110.

[T]he 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 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.* [Emphasis added].³³

After the Tribunal gathered additional facts and determined again, that the property in Harmony Montessori was not exempt from the payment of property tax, as the property of a charitable institution, the Court found:

[W]hen Harmony did operate at a loss, those losses were not absorbed by Harmony, nor were they covered by fundraising and donations. Rather, the losses were passed directly to the parents of Harmony's students, through increased tuition rates the following year. Ultimately, the petitioner in *Wexford* was a charity because it “provide[d] a gift—free or below-cost health care—to an indefinite number of people...” In contrast, virtually every student at Harmony pays the full cost of the education they receive. On the whole, Harmony bears very little resemblance to the petitioner in *Wexford*.

Livonia Montessori has a total of 31 students.³⁴ Petitioner’s tuition rates for the 2014-2015 and 2015-2016 tax years range from \$5,910, for half-day programming to \$11,520 for full day programming.³⁵ In the 2013-2014 school year, a \$2,000 tuition grant was given to one Livonia Montessori Student, in 2014-2015, a \$3,000 tuition grant was given to one Livonia Montessori Student and in 2015-2016, and a \$3,865 tuition grant was given to one Livonia Montessori Student.³⁶ As will be explained the discussion of *Wexford* factor six, below, the amount of “charity” given is irrelevant, however, here, as in *Harmony*, virtually every student pays the full cost of the private education they receive, and as such the Tribunal finds, Petitioner does not exist chiefly, if not solely, for charity, nor does it devote itself to charitable works on the whole.³⁷ Petitioner cannot demonstrate that it is actively pursuing its “charitable” mission to the exclusion of non-charitable activities.³⁸ Ms. Neff testified, “[w]e’re not organized solely for

³³ *Id* at 4. *Harmony Montessori Center v City of Oak Park*, unpublished opinion per curiam of the Court of Appeals, issued October 13, 2016 (Docket No. 326870), quoting *Wexford*, 475 Mich at 207-209.

³⁴ P10-2.

³⁵ See P14 and P15.

³⁶ *Id.*

³⁷ *Wexford*, 474 Mich at 215-16.

³⁸ *Wexford*, 474 Mich at 216.

charity, that's for certain, because we're a school. We're organized for education."³⁹ The Tribunal finds, here, Petitioner simply provides Montessori education for a fee, occasionally gives out partial scholarships, but raises tuition the following year in an attempt to fund the scholarships and stay in the "black." As such, the Tribunal agrees with Ms. Neff, Petitioner is not organized 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.*

As noted above, DHMC has a tuition assistance program which took effect in 2009. The reason for the commencement of the program was to assist students attending school during that year remain in school though their parents lost jobs to due layoffs at Ford Motor Company, where many of the DHMC parents were employed. Commencing in 2010, however, the tuition assistance program was expanded to include new students and there was no discrimination applied between applications from previously enrolled, and new students.⁴⁰

Petitioner contends it uses the Financial Aid for School Tuition program, a universal financial aid program not specific to its organization, which offers an initial unbiased financial screening tool to assist in determining need. FAST applications are made utilizing prior year's income, however, in some instances factors change before enrollment in the present school year, such as job loss or divorce. As such, even despite the recommended amount of FAST aid to a school family, DHMC may offer additional assistance. There has never been an instance when FAST recommends assistance that Livonia Montessori denies it. Further, if a family requires assistance mid-year, accommodations are made with payment plans or deferred payment.⁴¹ Ms. Neff did testify with regard to subsequent year tuition abatement, financial aid will not be granted, until the family's portion of the prior year's tuition is paid in full, however, Ms. Neff testified this situation has never happened.⁴²

³⁹ Tr at 138.

⁴⁰ Tr at 53-54, 56.

⁴¹ Tr at 54-57,

⁴² Tr 61,65.

Ms. Neff testified, “[o]nly rarely do we not accept a child, but if we don’t it will be for one of two reasons. It will be either be “because the child has demonstrated to us that he is a danger to other children, a child who’s very violent.”⁴³ The second reason is if a child has an extremely low IQ and requires special education, however, DHMC does accept students with learning disabilities.⁴⁴

In denying Respondent’s Motion for Summary Disposition, the Tribunal found it required additional facts regarding Petitioner’s potential discriminatory methods of choosing students to attend its school, i.e. does it give priority to students already enrolled, and why does the family’s portion of tuition, as opposed to that portion abated by DHMC, have to be paid in full before any additional grants can be made? Additionally, why are families required to pay a portion of tuition, at all, if they are unable to?

On June 28, 2017, the Michigan Supreme Court clarified factor three of *Wexford*, and as applied to this matter, affirms Petitioner’s contention that its charity is not applied on a discriminatory basis. In *Baruch SLS, Inc v Tittabawassee Twp*⁴⁵ Petitioner appealed the Tribunal’s determination, as affirmed by the Court of Appeals, that it did not qualify as a charitable institution within the meaning of MCL 211.7o and MCL 211.9 because it offered its charity on a discriminatory basis. Petitioner was an adult foster care facility that offered an income-based subsidy to qualifying residents of Stone Crest Assisted Living, provided those residents made at least 24 full monthly payments to petitioner.⁴⁶ The Tribunal found Petitioner was not a charitable institution under three of the six *Wexford* factors and the Court of Appeals found Petitioner was not a charitable institution under Factor three because, by limiting the availability of the income based subsidy, petitioner offered its services on a discriminatory basis.

The Supreme Court held that the Tribunal and the Court of Appeals decided this issue on the basis of an incorrect understanding of the third factor in the *Wexford* test and remanded to the Tribunal for proceedings consistent with its opinion. Noting that it has been interpreted incorrectly, by the lower courts, as excluding from the definition of charitable institution organizations that charge fees for their services, don’t operate at a loss, or select their

⁴³ Tr 33-34

⁴⁴ *Id.*

⁴⁵ *Baruch SLS, Inc v Tittabawassee Twp*, ___Mich ___; ___NW2d___ (2017) (Docket No. 152047)

⁴⁶ *Id* at 3.

beneficiaries using any non-random criteria, the Court clarified that Factor three excludes only restrictions or conditions that bear no reasonable relationship to a permissible charitable goal. The Court found beneficiaries have to be selected in some manner, as most organizations cannot serve everyone.⁴⁷ Further, the “reasonable relationship” test is to be construed broadly: “In short, the relationship between the institutions restriction and its charitable goal need not be the most direct or obvious. Any reasonable restriction that is implemented to further a charitable goal that passes factor four is acceptable.”⁴⁸ The Court acknowledged the deferential nature of this test, but found it warranted, absent any indication in the statute as to the restrictions a charity may or may not place on its services. The Tribunal finds in this matter that Petitioner’s selection criteria and restrictions, including a family’s responsibility to pay its portion of tuition in full, before another year’s grant can be made, bear a reasonable relationship to its alleged charitable goal, as put forth in the discussion of Wexford factor 2, above.⁴⁹

(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.

In its Order denying Respondent’s Motion for Summary Disposition, the Tribunal lacked information to determine from the evidence presented if Petitioner’s charges are more than what is needed for its successful maintenance. At the hearing, however, Petitioner established that Ms. Neff, with the assistance of the Assistant Head of School, handles the school’s budgeting, payroll, health insurance, general insurance, retirement plans, and sets tuition rates, and as such, is qualified to put forth testimony regarding Livonia Montessori’s financial situation.⁵⁰ Ms. Neff testified that the school operates at a loss, and that any surplus, if there happens to be any, is reinvested into the school. The Tribunal finds that operating at a loss does not, itself, determine that an organization is a charitable one, however, the fact that all monies collected from tuition are reinvested into the school indicates that Petitioner meets factor five.⁵¹ It should also be noted that there are occasionally monetary gifts to the school, but those

⁴⁷ *Id* at 9.

⁴⁸ *Id* at 13.

⁴⁹ *Id* at 11.

⁵⁰ Tr at 26-28.

⁵¹ *Harmony Montessori*, unpublished opinion per curiam of the Court of Appeals, issued October 13, 2016 (Docket No. 326870), quoting *Wexford*, 475 Mich at 207-209.

go into a brokerage account for capital emergencies.⁵² The huge bulk of the financing of the school comes from tuition and fees.⁵³

(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.

This factor eliminates any financial threshold of charity in order to qualify as a charitable institution. If the Tribunal finds Livonia Montessori to be a charitable institution, the amount of charity it gives is not relevant. Petitioner, Livonia Montessori, does not provide complete tuition grants as the awards are intended only to assist families, not replace their total tuition obligation,⁵⁴ however, again the number and amount of partial scholarships given is irrelevant if the organization is a charitable one.

The exemption exists only when the building and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated

The last element under Section 211.7o is whether the subject property is used solely for the charitable purposes for which Petitioner is incorporated. There is no indication from either party that the property is used for any other purpose other than the provision of day care and Montessori education. As such, the Tribunal finds this requirement is met.

At the hearing of this matter, it was Petitioner’s burden to demonstrate the subject property is entitled to an exemption from the payment of property tax as a charitable institution under MCL 211.7o. The Tribunal finds Petitioner has not met its burden by a preponderance of the evidence as it does not exist chiefly, if not solely, for charity.

JUDGMENT

IT IS ORDERED that the subject property is not exempt as the property of a charitable institution for the 2015 and 2016 tax years and as such, the property assessments for those years are AFFIRMED.

⁵² Tr at 35-36.

⁵³ Tr at 34-35.

⁵⁴ Tr at 61.

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 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%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, and (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%.

This Final Opinion and Judgment resolves 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.⁵⁵ 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.⁵⁶ 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.⁵⁷ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁵⁸

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."⁵⁹ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁶⁰ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁶¹

By Preeti Gadola

Entered: December 26, 2017

⁵⁵ See TTR 261 and 257.

⁵⁶ See TTR 217 and 267.

⁵⁷ See TTR 261 and 225.

⁵⁸ See TTR 261 and 257.

⁵⁹ See MCL 205.753 and MCR 7.204.

⁶⁰ See TTR 213.

⁶¹ See TTR 217 and 267.

