STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Midwest Creative Investments, L.L.C.,
Petitioner,

v

MTT Docket No. 322538

City of Dearborn,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith

FINAL OPINION AND JUDGMENT

I. INTRODUCTION

Petitioner, Midwest Creative Investments, L.L.C., is a Michigan nonprofit corporation. Petitioner owns the subject property, which consists of two parcels of real property (Parcel No. 8-21-008-201-001 and Parcel No. 8-21-008-002) located in Dearborn, Michigan at 10845 W. Warren Avenue and 7124 Miller Street, respectively. Respondent, City of Dearborn, is responsible for establishing the subject property's assessment and levies and collects property taxes. On March 14, 2006, Petitioner appeared before the appropriate local Board of Review and Appealed the 2006 assessment of the subject property. The Board of Review denied the relief requested and affirmed the assessments. Subsequently, Petitioner filed this appeal in which the matter was heard, at the parties' request, on briefs. Petitioner is represented by Attorney Pat D. Conner and Respondent is represented by Assistant Corporation Counsel William M. DeBiasi and Corporation Counsel Debra A. Walling.

The Tribunal finds, based upon the Stipulated Facts and the Conclusions of Law set forth herein, that Petitioner did not prove by a preponderance of the evidence that it qualifies for exemption from ad valorem property taxes, pursuant to MCL 211.7z. As such, the subject property is not exempt from ad valorem property taxes.

II. STIPULATED FACTS

The parties filed a Stipulated Statement of Facts that is set forth below in paragraphs one through eleven.

1. Petitioner Midwest Creative Investments, L.L.C., filed and served the instant Petition on or about May 5, 2006; Respondent filed and served its Answer and Affirmative Defenses on or about June 2, 2006.
2. The parcel numbers of the subject property are 8-21-008-201 and 8-21-008-202.
3. The tax years at issue are 2006 and subsequent years.
4. Petitioner is a domestic Limited Liability Company. Petitioner is the owner of the subject property, and has been the owner for all times relevant to the appeal.
5. Petitioner is not a non-profit entity, and does not claim to be exempt from ad valorem taxation.
6. Riverside Academy is a Michigan non-profit corporation which,was chartered as a public school academy in August 2002 by Central Michigan University, pursuant to Part 6A of the Revised School Code (MCL 380.501, et seq.).
7. The sole basis for the exemption claimed by the Petitioner and property owner, Midwest Creative, is that the property is leased to Riverside Academy and that a portion of it was leased to the Dearborn Public School District; therefore, Petitioner claims that the property is exempt pursuant to MCL 211.7z.
8. The initial lease between Petitioner and Riverside for Parcel No. 8-21-008-202 was converted from a sublease, and executed on or about May 1, 2004, and which extends until the year 2018.

9. For purposes relevant to this action, one half of Parcel No. 8-21-008-201 is leased by Petitioner to the Riverside Academy, with the other half of Parcel No. 8-21-008-201 leased to the Dearborn Public School District. All of Parcel No. 8-21-008-202 is leased to Riverside Academy.
10. Pursuant to a July 1, 2005 lease between Petitioner and Riverside, the stated base rent for the lease of one half of Parcel No. 8-21-008-201 is $12.50 per square foot (or $8489.58 per month), with a five year option term commencing in the year 2010 at a rate of $13.95 per square foot.
11. Under the applicable lease, Riverside Academy is required to pay Petitioner, among other things, pro-rata real property taxes, insurance, and building operating expenses.

III. PETITIONER'S CONTENTIONS

Petitioner contends that it was improperly denied a property tax exemption on properties leased to an educational institution. Petitioner argues that the subject property is exempt from property taxes levied under the General Property Tax Act, being MCL 211.1, *et seq*. More specifically, Petitioner argues that both Parcel No. 8-21-008-201-001 and Parcel No. 8-21-008-002 are exempt under MCL 211.7z(1).

Petitioner further contends that because the subject properties are leased to a public school district, such properties are eligible to be exempt from ad valorem taxation pursuant to MCL 211.7z(1). (Petitioner's Brief at 2). Petitioner contends that Riverside Academy, a lessee of the subject properties that is a Michigan nonprofit corporation exempt from federal income taxation, is "[r]ecognized as a school district and a governmental agency . . . [and as such], is no different than the Dearborn Public School District or any other school district in Michigan."

(Petitioner's Brief at 3). Based on this contention, Petitioner argues that "because the [subject properties] are leased to school districts, they are eligible for exemption from ad valorem taxation under MCL § 221.7z(1) . . . ." (Petitioner's Brief at 3). Thus, Petitioner contends that, "[the subject properties are] exempt from taxation pursuant to MCL § 221.7z(1) because [they are] leased by Petitioner to Public school districts," which themselves are exempt from taxation.

In support of its position, Petitioner cites *UAW-Ford National Education Development and Training Center v City of Detroit*, 14 MTT 265 (2002). Petitioner contends that in this case, the Tribunal "[a]pplied [MCL] 211.7z(1) to authorize an exemption for an educational organization," noting that the Tribunal "[o]bserved that education clearly serves a public purpose . . . ." (Petitioner's Brief at 4; citing 14 MTT 265 at 279-280). Petitioner further contends that "Riverside Academy is an integral component of the State's public education system," and that "the denial [by Respondent of the exemption] significantly impedes Riverside Academy's ability to carry out the educational mission assigned to it by the State and Central Michigan University as its chartering organization." (Petitioner's Brief at 4).

IV. RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner does not qualify for the property exemption because Petitioner does not satisfy all of the requirements necessary to be tax exempt. Specifically, Respondent argues that Petitioner is not itself exempt from ad valorem taxes, a necessary requirement, and thus is not entitled to claim the exemption from taxation.

Respondent further contends that based on the facts of this case, as they are applied to the plain language of the statute, Petitioner has not met its burden in establishing what is required for the exemption in MCL 211.7z. Respondent asserts that Petitioner must meet its burden "beyond a reasonable doubt," and that the case of *Michigan United Consersation Club v Lansing*

Township, 129 Mich App 1; 242 NW2d 290 (1983), provides for such a burden. (Respondent's Brief at 4). Respondent contends that Petitioner is an LLC, a non-exempt organization, and that the lessees are both nonprofit in nature. Therefore, Respondent concludes that Petitioner's "[d]ifficulty . . . [l]ies in the language of § 7z(1) which requires that property 'leased, loaned or otherwise made available' to an educational institution is exempt only if it 'would have been exempt from ad valorem taxation had it been occupied by its owner solely for the purposes for which it had been incorporated.'" (Respondent's Brief at 5; emphasis in original) Respondent concludes this contention noting that if Petitioner "[o]ccupied the property it would not be eligible for an exemption," and that "the property does not become eligible merely by virtue of the lease." (Respondent's Brief at 5). Thus, Respondent contends that Petitioner cannot claim the exemption due to its status as an individual property owner.

Respondent relies on *West Michigan Academy of Arts and Academics v Twp of Robinson*, 10 MTT 917 (2000), as supporting the notion that a non-exempt private individual cannot claim the exemption in MCL 211.7z. Here, Respondent asserts that the Tribunal has already ruled in this matter, and that "the fact that the property owner in the *West Michigan* case was a non-exempt, private individual was fatal to the school's claim for an exemption in the eyes of [the Tribunal]." (Respondent's Brief at 6)

Additionally, Respondent contends that the policy reasons for most exemptions are to confer a benefit upon the general public. Respondent cites to the Vermont Supreme Court's decision in *Lincoln Street Inc v Town of Springfield*, 159 Vt. 181; 615 A2d 1028 (1992), in support of this notion. Respondent reasoned that to allow non-exempt private individuals the ability to claim an exemption "[w]ould be inconsistent with the intent of charitable exemptions . . . ." (Respondent's Brief at 6). Thus, Respondent contends that allowing Petitioner to claim an

exemption, pursuant to MCL 211.7z, would go against the general policy of public benefit in the exemption scheme.

V. APPLICABLE LAW

"In general, tax exemption statutes are to be strictly construed in favor of the taxing authority." *Michigan United Conservation Clubs* v *Lansing Twp*, 423 Mich 661, 664 (1985); *Ladies Literary Club* v *Grand Rapids*, 409 Mich 748, 753-754 (1980). The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption. *ProMed Healthcare* v *Kalamazoo*, 249 Mich App 490 (2002).

Section 7z(1) (MCL 211.7z) provides that:

> Property which is leased, loaned or otherwise made available to a school district, community college, or other state supported educational institution, or 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 nonprofit educational institutional primarily for public school or other educational purposes is exempt from taxation under this act.

In Michigan, exemptions from taxation are strictly construed in favor of the taxing authority. *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980). The petitioner bears the burden to prove by a preponderance standard that it is within the property class entitled to such an exemption. *ProMed Healthcare* v *City of Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002). It is the duty of the Tribunal to decide whether the Petitioner has met its burden pursuant to the statutory requirements.

To qualify for the exemption in MCL 211.7z, Petitioner must satisfy all of the necessary requirements in the statute. Essentially, there are three main requirements to the statute: (1) the subject property is leased, loaned or otherwise made available to either a school district,

community college, other state-supported educational institution or nonprofit educational institution; (2) the subject property would have been exempt from ad valorem taxation if it was occupied by its owner solely for the purposes for which it was incorporated; and (3) the subject property is used primarily for public school or other educational purposes while it is being used by the school district, community college, other state-supported educational institution or nonprofit educational institution.

VI. CONCLUSIONS OF LAW

Respondent concedes that there is no issue as to requirements one or three, but that Petitioner fails to satisfy requirement two. Petitioner, on the other hand, maintains that it qualifies for the exemption, implying that it has met all three requirements. Under the facts in this case, a plain-language reading of the statute demonstrates that Petitioner has not met its burden with respect to requirement two, and as such, MCL 211.7z(1) is inapplicable to Petitioner.

Previous Tribunal rulings provide support that Petitioner does not qualify for the exemption. Respondent cited to *West Michigan Academy of Arts and Academics v Twp of Robinson*, (*supra*), and the Tribunal finds this case to be instructive and on point. In *West Michigan Academy*, the issue the Tribunal considered was "[w]hether the subject property leased by [the petitioner] as an educational institution is exempt from ad valorem taxation pursuant to MCL 211.7z . . . ." 10 MTT 917 at 919. In that case, the petitioner was the lessee of property owned by a non-exempt individual. *Id.* The petitioner claimed a property exemption pursuant to MCL 211z.7 and asserted that it owned the property by virtue of an unexecuted option to

purchase clause in the lease.[1] *Id.* at 918. The respondent's main contentions were that the petitioner did not own the property, and that absent a specific exemption for either a lessee or a tenant, the petitioner is not exempt from ad valorem taxation. *Id.* at 919. The Tribunal concluded that the lease arrangement conferred no ownership right to the property in the petitioner, but rather "[t]he subject property . . . [w]as owned by . . . [a]n individual who is not exempt." *Id.*

In analyzing whether a non-property-owning educational organization was exempt under MCL 211.7z, the Tribunal in *West Michigan Academy* found against the petitioner. After finding that the petitioner did not own the subject property, the Tribunal began to discuss the purpose behind MCL 211.7z. The Tribunal explained that the purpose of MCL 211.7z was to "[expand the general exemption scheme] to include other *exempt* owners other than just non-profit charitable institutions addressed in [MCL 211.7o(3)]."[2] *Id.* (emphasis added). The Tribunal reasoned that pursuant to MCL 211.7z, such "other exempt owners" or those owners who do not occupy their property, but nevertheless *would be exempt* may still claim their property as exempt despite their not occupying the property, but only if they allow the unoccupied property they own to be used by an educational institution. Thus, under this expanded coverage of the exemption scheme found in MCL 211.7z, Michigan property owners may claim an exemption on the property they own, but no longer occupy, if they would otherwise be entitled to an exemption if they occupied the property.

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[1] The petitioner's ownership argument is complex, and its specific details are beyond the scope and dealings of this opinion.

[2] The original statute quoted in this language from the *West Michigan Academy* opinion was MCL 211.7o(2), which has since been modified by 1998 P.A. 536. There are no substantive changes to this rewritten statute that would impair the analysis by reference to it in this case.

Underscoring this notion of a would-be-exempt property owner qualifying for an exemption while itself not occupying the property, the Tribunal went on to explain what is required for such an owner seeking to qualify under MCL 211.7z. Fundamental to this analysis was the threshold requirement that the property owner must itself be exempt from ad valorem taxation. In this regard, the Tribunal could not have been more clear in noting that "the modifier in MCL 211.7z, 'which would have been exempt,' addresses the property owner as a lessor that would have been exempt had it occupied the property for its own exempt purposes." *Id.* at 919, 920. Here, the need for the property owner himself to qualify for *an* exemption becomes the prerequisite to the lessee qualifying for *the* exemption provided for in MCL 211.7z, because the lessee does not qualify for the exemption *but for* the owner's qualification. Thus, the Tribunal interpreted MCL 211.7z as requiring ownership of property, by a would-be-exempt owner, who then leases the property to an educational institution for an exempt purpose.

Applying the rule in *West Michigan Academy* to the present case yields a similar result. Unlike the petitioner in *West Michigan Academy*, Petitioner owns the leased properties, yet like the petitioner in *West Michigan Academy*, Petitioner here is also not an exempt owner.

It is undisputed that Petitioner, as a Michigan incorporated LLC, is not itself an "exempt organization" of any kind. Moreover, Petitioner does not try to posture itself as an owner of property that would otherwise be exempt.[3] Because Petitioner is an LLC, Petitioner cannot avail itself of *any* exemption, *even if it occupied the subject properties*. Thus, Petitioner fails to satisfy the threshold requirement for a claim of exemption under MCL 211.7z.

[3] Petitioner is not a non-profit entity, and does not claim to be exempt from ad valorem taxation. ("Stipulated Facts" No. 5, *supra*).

Further, the fact that Petitioner has leased the property to nonprofit entities is also not dispositive of its ability to claim the exemption in MCL 211.7z. Petitioner's main contention is that it satisfies the exemption requirements simply because it leased its properties to a nonprofit organization. This contention ignores the fundamental and threshold requirement of qualifying for the exemption, pursuant to MCL 211.7z, independent of its relationship to the nonprofit organization leasing the properties. It is not enough for Petitioner, under the statutory scheme, to claim exemption merely by virtue of it leasing the properties to a nonprofit organization that uses the properties for educational purposes. MCL 211.7z and *West Michigan Academy* clearly pronounce that Petitioner, as an individual entity, must first be eligible for an exemption, independent of its leasing the properties.

Therefore, the properties' true cash, state equalized and taxable values for the tax years at issue are as follows:

Parcel Number: 8-21-008-201-001

Year	TCV	SEV	TV
2006	$1,129,000	$ 564,500	$ 564,500

Parcel Number: 8-21-008-201-02

Year	TCV	SEV	TV
2006	$563,000	$ 281,500	$ 281,500

VII. JUDGMENT

IT IS ORDERED that the subject property's true cash, state equalized, and taxable values for the tax years at issue are as set forth in 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 as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

Entered: August 25, 2008 By: Kimbal R. Smith III, Tribunal Judge
MA/sms