

7-12-2017

Ecumenical Center and International Residence v City of Ann Arbor

Michigan Tax Tribunal

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Michigan Tax Tribunal, "Ecumenical Center and International Residence v City of Ann Arbor" (2017). 2017. 13.
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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Ecumenical Center and International Residence,
Petitioner,

v

MTT Docket No. 16-000604

City of Ann Arbor,
Respondent.

Tribunal Judge Presiding
Preeti P. Gadola

ORDER PARTIALLY GRANTING RESPONDENT'S MOTION FOR SUMMARY
DISPOSITION UNDER MCR 2.116(C)(10)

ORDER PARTIALLY GRANTING SUMMARY DISPOSITION IN FAVOR OF
PETITIONER UNDER MCR 2.116(I)(2)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On March 3, 2017, Respondent filed a motion requesting the Tribunal enter summary judgment in its favor in the above-captioned case under MCR 2.116 (C) (10). More specifically, Respondent contends that there are no genuine issues of material fact remaining and Petitioner cannot demonstrate that it is a charitable institution pursuant to MCL 211.7o, entitled to a charitable exemption from the payment of real and personal, ad valorem, property tax. Respondent also contends Petitioner cannot demonstrate it is an educational institution pursuant to MCL 211.7n, and as such, is not entitled to an educational exemption under the aforementioned statute. On March 24, 2017, Petitioner filed a response to the Motion. Petitioner contends that it can demonstrate that it is eligible for the exemptions and that it is entitled to summary judgment under MCR 2.116(I) (2).

Petitioner, Ecumenical Center and International Residence (“ECIR”), provides privately owned off campus housing primarily to University of Michigan International Students, but also houses some American students.¹ Per its Petition, ECIR “is listed under Housing on the UM

¹ Petitioner’s Exhibit B: Affidavit of Bruce Martin, Executive Director of ECIR, (“Affidavit”) at 5.

International Center’s website, which describes ECIR as a ‘living-learning community for students and visiting scholars from around the world’²

As noted above, in its Petition, Petitioner requested an exemption from the payment of property tax for the 2016 tax year under MCL 211.7o and/or MCL 211.7n. Petitioner also requested an exemption from the payment of property tax for the 2015 tax year, pursuant to MCL 211.53b(1). The parcel numbers of the real and personal property under contention are 09-09-33-202-023 and 09-90-00-064-362.

The Tribunal has reviewed the Motion, response, and the evidence submitted and finds that partially granting Respondent’s Motion for Summary Disposition and partially granting summary disposition in favor of Petitioner is warranted at this time.

RESPONDENT’S CONTENTIONS

In support of its Motion, Respondent contends that there are no genuine issues of material fact remaining and Petitioner cannot demonstrate that it is organized chiefly for charity, that it does not discriminate, or that its activities lessen the burden of the government.

Respondent contends that Petitioner does not meet all required factors in *Wexford Medical Group v City of Cadillac*,³ in order to qualify as a charitable institution. Respondent specifically refers to Factors two, three and four.⁴ With regard to Factor two, Respondent contends that Petitioner’s Articles of Incorporation state that Petitioner is organized to serve “international students” and that there is no precedent to justify this as a charitable purpose. With regard to Factor three, Respondent contends that Petitioner only offers its services on a discriminatory basis as the application process requires much personal information including “nationality” and “cultural identities” and is highly subjective. In that regard, Respondent

² See Petition, paragraph 48, filed April 21, 2016.

³ *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

⁴ In *Wexford* the Court put forth six factors, all of which must be met, in order to qualify as a nonprofit charitable institution. The disputed factors include:

- (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.

contends that this case is factually similar to *Telluride Ass'n Inc v Ann Arbor*,⁵ given the petitioner in that case similarly housed University of Michigan students and the selection process was “highly subjective” and was, therefore, discriminatory. Respondent also claims that Factor four cannot be met. Specifically, Respondent asserts that Petitioner does not bring people “under the influence of education” or “assist people to establish themselves for life” as the residents are University of Michigan students who are already under the influence of education and are pursuing higher education to establish themselves. Similarly, Respondent contends that Petitioner does not bring people “under the influence of religion” as it clearly states that it does not support or encourage any religious community. Respondent claims there is no lessening of the burden of government because students are not required to utilize University of Michigan housing and University housing is financially self-supporting. Overall, Respondent contends that Petitioner does not provide any “gift” as residents only receive apartments in exchange for market rent.

With regard to the educational exemption under MCL 211.7n, Respondent claims that Petitioner cannot qualify as it clearly does not meet the test under *Ladies Literary Club v Grand Rapids*,⁶ wherein the court held that to qualify for an exemption a petitioner must “fit into the general scheme of education provided by the state and supported by public taxation.” Respondent again relies, in part, on *Telluride*, as it contends the facts in this case are substantially similar.

PETITIONER’S CONTENTIONS

In support of its response, Petitioner contends that there is nothing in the law to support Respondent’s contention that a nonprofit institution for University of Michigan international students is not charitable. Respondent merely relies upon Petitioner’s Articles of Incorporation and Petitioner contends the Articles actually support a finding that it is organized for charity. Petitioner cites to its IRS determination that it is charitable and quotes *Wexford* to support its contention that Respondent has failed to demonstrate it is not charitable. Petitioner further contends that it is not discriminatory as it is “open to all international students without regard to

⁵ *Telluride Ass'n Inc v Ann Arbor*, unpublished opinion per curiam of the Court of Appeals issued July 16, 2013 (Docket Nos. 304735 and 305239).

⁶ *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980).

church membership, race, color or creed.”⁷ Petitioner claims the affidavit of Bruce Martin, Executive Director of ECIR, supports its allegation that Petitioner is distinguishable from *Telluride* in that its selection process is not highly subjective. Rather, Petitioner suggests its selection is based on a “first come, first served” basis and that it does not rank the applicants in any way. With regard to bringing individual’s hearts and minds under the influence of education or religion, Petitioner contends that Respondent has, again, failed to demonstrate any fact to support that this factor is not met. Merely because a student is attending the University of Michigan, does not mean the individual cannot have their heart or mind brought under the influence of education or religion by Petitioner. Petitioner further claims the Affidavit establishes that Petitioner assists its residents in establishing themselves for life as illustrated by the experiences of former residents.

Finally, Petitioner alleges it qualifies as an educational institution under the statute and that its programing fits into the general scheme of education provided by the University of Michigan. It further distinguishes itself from the petitioner in *Telluride* stating that its educational programing is much more expansive than the “two summer programs offered for high school juniors and sophomores”⁸

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.⁹ In this case, Respondent moves for summary disposition under MCR 2.116(C)(10) asserting that no genuine issues of material fact remain. The Tribunal also finds it appropriate to address MCR 2.116(I)(2) in this case.

Summary disposition under MCR 2.116(C)(10) 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. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.¹⁰ In the event, however, it is determined

⁷ Petitioner’s Brief in Opposition to City of Ann Arbor’s Motion for Summary Disposition (“Response Brief”) at 14.

⁸ *Id.* at 19.

⁹ See TTR 215.

¹⁰ See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.¹¹

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.¹² The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.¹³ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.¹⁴ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.¹⁵ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.¹⁶

Summary disposition under MCR 2.116(I)(2) is appropriate “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment . . . ,” and as such, the court may render judgment in favor of the opposing party.¹⁷

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent’s Motion under MCR 2.116 (C)(10) and finds that partially granting the Motion is warranted. In addition, the Tribunal also finds that partially granting summary disposition in favor of Petitioner under MCR 2.116(I)(2) is warranted.

The Tribunal shall first address Respondent’s contention that its references to MCL 211.7o(1) and MCL 211.7n also include MCL 211.9(1)(a). Petitioner, at no time, referenced or requested an exemption under MCL 211.9(1)(a). Further, as recently determined by the Michigan Supreme Court in *SBC Health Midwest, Inc v City of Kentwood*,¹⁸ the requirements to

¹¹ See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

¹² See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

¹³ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

¹⁴ *Id.*

¹⁵ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

¹⁶ See *McCormic v Auto Club Ins Ass’n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

¹⁷ See also *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000).

¹⁸ *SBC Health Midwest, Inc v City of Kentwood*, ___ Mich ___; ___ NW2d ___ (2017).

qualify for an exemption under MCL 211.9(1)(a) differ from those under MCL 211.7n.¹⁹ As the issue of an exemption under MCL 211.9(1)(a) was not properly raised or requested by Petitioner, it is not pending in this appeal. Therefore, the Tribunal will not address the merits of a claim for exemption under MCL 211.9(1)(a).

A. Charitable Institution Exemption under MCL 211.7o

The exemption for real and personal property owned and occupied by a nonprofit charitable institution is found in MCL 211.7o (1) which reads, in pertinent part: “[r]eal or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.”

In *Wexford*, the Supreme Court changed the test for a charitable exemption previously affirmed in *Ladies Liberty Club*. The Court restated the test in three parts:

- (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.

The meaning of “charitable institution” is not legislatively defined, and as such, has been developed in case law. In *Retirement Homes v Sylvan Twp*,²⁰ the Michigan Supreme Court set forth the following definition of “charity:”

[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 the 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 the government*.²¹

Further, the proper focus in determining an individual organization’s eligibility for a charitable institution exemption is whether the organization’s “activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the

¹⁹ The Court held, It may also follow that the standard is also different from MCL 211.7o; however, the Tribunal declines to fully address this issue as Petitioner has not requested an exemption under MCL 211.9(1)(a).

²⁰ *Retirement Homes v Sylvan Twp*, 416 Mich 340; 330 NW2d 682 (1982).

²¹ *Id.* at 348-349 (emphasis in original).

benefit of an indefinite number of persons.”²² *Wexford* reaffirmed the “widely used definition” of “charity”:

[Charity] * * * [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.”²³

Wexford also identified six factors relevant to the determination of whether an organization meets the definition of “charity” that was first set forth in *Retirement Homes*:

In light of this definition, certain factors come into play when determining whether an institution is a “charitable institution” under MCL 211.7o. Among them are the following:

- (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.²⁴

In its Motion, Respondent does not dispute that Petitioner owns and occupies the subject property. Further, Respondent does not dispute that the property is occupied solely for the purpose for which it was incorporated. Rather, Respondent only disputes that Petitioner cannot demonstrate that it meets all factors under *Wexford*. The specifically disputed Factors are two,

²² *Michigan United Conservation Clubs v Lansing Twp* (“*MUCC*”), 423 Mich 661, 673; 378 NW2d 737 (1985).

²³ *Wexford*, 474 Mich at 211 (citation omitted).

²⁴ *Wexford*, 474 Mich at 215.

three, and four. Thus, the Tribunal finds there are no genuine issues of material fact in dispute with regard to the ownership and occupancy, that the property is occupied solely for the purposes for which it was incorporated, and with regard to *Wexford* Factors one, five, and six. The remaining three factors enumerated by *Wexford* must be applied along with the recognized statutory definition of charity, on a case-by-case basis, with special attention paid to case law involving similar facts. In applying the relevant factors to the subject property, the Tribunal individually addresses these remaining factors as follows.

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

With regard to Factor two, Respondent contends that Petitioner's Articles of Incorporation clearly indicate that Petitioner is not organized chiefly for charity. Specifically, the Articles of Incorporation state that the purpose for which it is formed is "to formulate and execute the policies of a program for the spiritual, social, and personal welfare of the international students enrolled at the University of Michigan" ²⁵ Respondent concludes that "an entity organized primarily to serve 'international students' is 'organized chiefly, if not solely, for charity.'" ²⁶ Petitioner contends that Respondent's assertion is not supported and that its Articles do, in fact, support the conclusion that Petitioner is organized for educational and religious purposes which is charitable in nature. The Tribunal finds that Respondent has failed to support its allegation that "international students" cannot be a group that can be serviced by a charitable organization. Moreover, "[w]hile the articles bear relevance to whether the use of the property qualifies as charitable, they are not definitive."²⁷ Thus, the Tribunal finds that limiting the evaluation of this factor to Petitioner's Articles would be an error. Here, Petitioner also points to its IRS determination that Petitioner is "organized and operated exclusively for religious and charitable purposes."²⁸ Again, the fact that Petitioner is exempt as a 501(c)(3) does not definitively determine that Petitioner is organized chiefly for charitable purposes. The Michigan standard for exemption is more rigorous than the federal standard and the mere fact that Petitioner qualifies

²⁵ Respondent's Exhibit 1: Petitioner's Non-Profit Articles of Incorporation at 1.

²⁶ Respondent's Brief in Support at 11.

²⁷ *Camp Retreats Found, Inc v Twp of Marathon*, unpublished opinion per curiam of the Court of Appeals, issued May 15, 2012, (Docket No. 304179) (citing *Michigan Baptist Homes v City of Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976), wherein the court looked beyond the articles of incorporation).

²⁸ Petitioner's Exhibit A.

for tax exempt status under Federal law creates no presumption in favor of an exemption from property taxes.²⁹ The Tribunal, nonetheless finds that this is one factor to be considered.

Petitioner also cites to its Mission Statement which states:

The mission of ECIR is to be a welcoming community for students/scholars of all nationalities; to provide residential and education programs fostering understanding and respect for all cultures and spiritual traditions; to promote lifelong friendships and leadership skills that contribute to harmony and peace between communities and nations around the world.

The Tribunal finds that Petitioner's purpose set forth in its Articles of Incorporation and its Mission Statement are consistent with definition of "charity" as set forth above. In addition to these statements, Petitioner has provided evidence of its numerous charitable events and activities. The Court in *Wexford* stated "Petitioner is not only organized as a charitable institution as reflected in its statement of purpose and its bylaws, but it devotes itself to charitable works on the whole."³⁰ Here, Petitioner is similar in that when looking at the organization as a whole, its overall nature and primary organizational purpose is charitable.

Respondent's primary contention is that Petitioner cannot cite to precedent wherein "international students" are an appropriate demographic for charitable works. Conversely, Respondent has also failed to cite any precedent stating that "international students" cannot be a demographic for charitable works. This contention appears to relate more to Factor three, however, the Tribunal notes that *Wexford* clearly indicates that "a charitable institution can exist to serve a particular group or type of person"³¹ Viewed in the light most favorable to Petitioner, the nonmoving party, the Tribunal finds that Respondent has not demonstrated that an organization to serve international students cannot be charitable. The Court in *Harmony Montessori Center v City of Oak Park*,³² held that "[t]he consideration discussed in context in *Wexford* was whether the charity's services—whatever they might be—were available to anyone, in the context 'of the type and scope of charity it offers.'" Similarly, the Court in *Wexford* stated

²⁹ See *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753 n 1; 298 NW2d 422 (1980); see also *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968), which states, "[t]he 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"

³⁰ *Wexford*, 474 Mich at 215-16.

³¹ *Wexford*, 474 Mich at 213.

³² *Harmony Montessori Center v City of Oak Park*, unpublished opinion per curiam of the Court of Appeals, issued February 18, 2014 (Docket No. 312856) (quoting *Wexford*, 474 Mich at 213).

that “Respondent has pointed to no other reason for petitioner's existence. Nor has respondent shown any evidence that petitioner is not actively pursuing its mission to the exclusion of any noncharitable activities. We find these omissions telling.”³³ Here, Respondent merely asserts that Petitioner cannot demonstrate that it is charitable without indicating another reason for Petitioner’s existence or evidence that Petitioner is not pursuing its charitable mission.

Respondent relies upon the unpublished case of *Telluride* regarding the remaining two factors. However, the Tribunal finds this case is also relevant to Factor two. The petitioner in that case was similar to Petitioner, here, whereby it was a scholarship house which housed University of Michigan students. In that case, the Tribunal examined the petitioner’s Certificate of Incorporation, testimony interpreting the same, petitioner’s By-Laws, petitioner’s Charter, and activities. Overall, the Tribunal held that the petitioner had a community service oriented purpose and “to assist the member in developing his or her potential for leadership and public service.”³⁴ The Tribunal continued in that the petitioner offered numerous “gifts” but that given only its residents received the primary gift (i.e., the opportunity to live at the property at no cost to the student), it was not “indefinite” and not sufficient to demonstrate a charitable nature. On appeal, however, the Court held that “[w]e agree with *Telluride* that the tribunal erred to the extent it concluded that *Telluride* is not organized chiefly, if not solely, for charity.”³⁵ While the Court did not detail its reasoning for its disagreement, the Tribunal finds it is nonetheless telling. More specifically, the petitioner in *Telluride* similarly offered its “charity” to only University of Michigan students which qualified academically to become a member of the “self-governing scholarship house.” This is similar to Petitioner who offers its charity to University of Michigan international students. Moreover, the language utilized in *Telluride*’s Certificate of Incorporation is not fundamentally distinguishable from the language in Petitioner’s Articles of Incorporation.

The Tribunal also finds that Petitioner does, in fact, offer a “gift” to its residents. The undisputed facts in this case demonstrate that Petitioner offers its rooms for rent at below market rates, it offers fully furnished apartments, and provides its residents with meals and a library with books and multi-media access.³⁶ In some instances, Petitioner even offers reduced or subsidized

³³ *Wexford*, 474 Mich at 216.

³⁴ *Telluride Ass’n v City of Ann Arbor*, 20 MTT 291 (Docket No. 306817), issued May 24, 2011 at 303.

³⁵ *Telluride*, unpub op at 4.

³⁶ Affidavit at 5.

rental rates wherein the difference is made up through donations.³⁷ The following passage from *Wexford* is on point:

Petitioner is also fundamentally different from the Hillside Terrace home for the aged in *Michigan Baptist, supra*, and the apartment complex in *Retirement Homes, supra*. In both of those cases, the cost of maintaining the institutions was covered by fees collected from the residents. Prospective residents whose health or financial status did not meet strict requirements were not accepted. And although the petitioner in *Michigan Baptist* made some small exceptions in that regard, the general rule was of an exclusionary nature, not a charitable one.³⁸

The facts in this case demonstrate that if an applicant cannot afford the rent, Petitioner provides assistance in obtaining funding to allow that individual to receive its charity. This is distinguishable from cases in which residents were turned away based upon their financial status.

Petitioner further offers numerous educational opportunities as well as community service opportunities.³⁹ The Court in *Retirement Homes* held that the apartments were not exempt and that residents did not “receive any significant benefit that they do not pay for” and therefore, there is no “gift to the residents.” The *Wexford* opinion cited from *Retirement Homes* as follows:

[T]here is no “gift” for the benefit of an indefinite number of persons or for the benefit of the general public without restriction in the operation of the apartments. The monthly fee is designed to cover all operating costs as well as to recover the construction costs of the apartments. While it does not appear that the apartments are operated for a profit, neither does it appear that the residents receive any significant benefit that they do not pay for. There is no “gift” to the residents. The operation of the apartments does not appear to benefit the general public. Its residents are chosen on the basis of their good health, their ability to pay the monthly charge, and, generally, their ability to live independently.⁴⁰

Again, these facts are distinguishable from the facts of this case. More specifically, Petitioner’s residents receive gifts beyond below market rent or subsidized rent. The evidence on record demonstrates that Petitioner provides community meals and events for its residents as well as provides numerous educational opportunities. Thus, the Tribunal finds that when viewing the evidence in the light most favorable to Petitioner, Petitioner is organized chiefly for charitable purposes.

³⁷ Affidavit at 6.

³⁸ *Wexford*, 474 Mich at 216.

³⁹ See Affidavit, attachments.

⁴⁰ *Wexford*, 474 Mich at 211 (quoting *Retirement Homes*, 416 Mich at 349-50).

(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.

With regard to Factor three, the Tribunal finds that Respondent contends that Petitioner offers its charity on a discriminatory basis because its application and selection processes are discriminatory in that Petitioner's website FAQs indicate that candidates are selected "based on their potential contribution to the community" and that the selection process is highly subjective. Respondent correlates this process to that in the *Telluride* case, wherein, the Court of Appeals affirmed the Tribunal's determination that Telluride's charity was offered on a discriminatory basis. Petitioner contends that its "residential program is open to all international students without regard to church membership, race, color or creed."⁴¹ Petitioner also contends that this case is distinguishable from *Telluride* as its positions are filled on a "first come, first served" basis and the applicants are not ranked in any way.

The Tribunal finds that Petitioner first set forth its contention that its residents were selected on a first come, first served basis in its Petition.⁴² Mr. Martin's affidavit sets forth the following regarding the selection process:

We accept inquiries and applications throughout the year, and we accept applications in the order they come in, the primary factor being the availability of beds in our apartments. Over the course of my eight years at ECIR, and the hundreds of applications and residents we have had, I know that ECIR has never "graded" or "ranked" our applications, and we do not take any steps to select who among our applicants "deserves" to be a resident. The questions on our application are helpful in determining which apartment the resident will stay, and in integrating residents into our program once they are living here. The only limit on a person wishing to be a part of our residential program is space available at the time of the application. Our residential program is first come, first served.

This fact is not disputed by Respondent by anything other than Respondent's reference to Petitioner's website. The website indicates that applications are reviewed and, among other things, candidates are selected based on availability. This portion is wholly consistent with Mr. Martin's affidavit. The website further states that applications are reviewed for "potential contribution to the community" and candidates "interests." This again is not inconsistent with Mr. Martin's affidavit wherein he states that the application responses assist in determining the

⁴¹ Petitioner's Response at 14.

⁴² Petition at 5.

appropriate apartment for the candidates. Therefore, the Tribunal finds that there is no disputed fact, on record, that Petitioner's selection process is done on the basis of first come, first serve. Contrary to Respondent's assertions, this is similar to *Wexford* and does not demonstrate that its charity is discriminatory.

Respondent also parallels this case to *Telluride*. In *Telluride*, the Court of Appeals held that:

Telluride does discriminate by choosing who, among these groups, will receive its charity. Telluride selects scholarship recipients through a highly subjective application process. Candidates submit essays that are read by Telluride House members. "Each candidate receives an overall ranking based on the strength of the essays, awards, references, and community service, among other factors." Telluride House members then conduct interviews and choose to whom it will offer scholarships. Telluride selects its TASP and TASS participants on the basis of a similar application process.⁴³

This is factually distinguishable from the case at hand. It is undisputed that Petitioner does not rank its applicants based on their answers, or references, unlike the petitioner in *Telluride*. Therefore, based on the undisputed facts the Tribunal finds that Petitioner's selection process is distinguishable from *Telluride* and is not a highly subjective process. There is no genuine issue of fact remaining that Petitioner does not offer its charity on a discriminatory basis.

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*⁴⁴ 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.⁴⁵ 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.

⁴³ *Telluride*, unpub op at 4.

⁴⁴ *Baruch SLS, Inc v Tittabawassee Twp*, ___ Mich ___; ___ NW2d ___ (2017) (Docket No. 152047)

⁴⁵ *Id* at 3.

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 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. Specifically mentioning *Telluride*, the Court found beneficiaries have to be selected in some manner, as most organizations cannot serve everyone.⁴⁶ 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."⁴⁷ 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 insignificant selection criteria, or restrictions or conditions, bear a reasonable relationship to its permissible charitable goal, as put forth in the discussion of *Wexford* factor 4, below.⁴⁸

(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.

Respondent contends that Petitioner cannot bring its residents' hearts and minds under the influence of education because all residents are University of Michigan students who have already brought their minds under the influence of education. Respondent has, however, failed to cite any authority that indicates that a collegiate student cannot be further brought under the influence of education. The Tribunal is unconvinced that merely because the residents are already pursuing education that their minds cannot be further brought under the influence of education. Mr. Martin's affidavit indicates that Petitioner:

⁴⁶ *Id* at 9.

⁴⁷ *Id* at 13.

⁴⁸ *Id* at 11.

Offers extensive and year round educational programs for [their] residents, the entire international student community at the University of Michigan, and the public at large, in collaboration and co-sponsorship with the UM International Center and other UM departments and programs. This educational programming is designed to help international students learn about their different cultures and religious and spiritual traditions, and to succeed and thrive in the multicultural community of the UM, Ann Arbor, and Michigan.

Further, the attachments to the Affidavit demonstrate numerous programs offered by Petitioner including speakers, presentations on cultural music and food, as well as religion and spiritual matters. The Tribunal finds that there is nothing in the record to dispute that these activities brought the residents' minds under the influence of education. Both parties rely upon the ruling in *Kalamazoo Aviation History Museum v City of Kalamazoo*,⁴⁹ in which the Court held that "where a nonprofit institution educates the public so as to enhance its understanding of a worthwhile subject the institution can qualify as a tax-exempt charitable organization"⁵⁰ The Tribunal finds that it cannot make the determination that the cultural educational opportunities offered by Petitioner is not part of a "worthwhile subject." Moreover, the *Kalamazoo Aviation* Court went on further to state:

If a nature center which seeks to impart a better understanding of natural resource management qualifies for a charitable exemption, or if a conservation club would qualify as a tax-exempt charity but for its political activities, we see no reason why tax-exempt status should not be accorded to a museum which preserves and informs the public about part of our history.⁵¹

The Tribunal similarly concludes that there is no reason to find that Petitioner's educational programming do not bring its residents under the influence of education.

Respondent also contends that Petitioner does not bring its residents hearts and minds under the influence of religion because it is an interreligious community and it states that it does not support or encourage any specific religion. Respondent again does not provide any support for this contention and there is no indication that an organization must sponsor a single religious faith to bring individuals hearts and minds under the influence of religion. Like the above, Petitioner has submitted documentation demonstrating that it sponsored activities such as presentations on specific religions, faiths, and spiritual events. These activities could, in fact,

⁴⁹ *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709; 346 NW2d 862 (1984).

⁵⁰ *Kalamazoo Aviation*, 131 Mich App at 717.

⁵¹ *Kalamazoo Aviation*, 131 Mich App at 717-18.

bring individuals under the influence of religion. At a minimum, these presentations present additional educational opportunities.

Respondent further contends that Petitioner cannot demonstrate that it assists people to establish themselves for life. In this regard, Respondent erroneously and without support states that all the residents receive is an apartment in exchange for market rent. However, as specifically discussed above the undisputed facts show that Petitioner provides below market rent and subsidized rent to its residents. It further provides additional programming including community dinners and presentations, at no additional cost. Respondent has failed to dispute the fact that Petitioner offers cultural experiences and educational opportunities which may assist international students to establish themselves for life. Mr. Martin's affidavit specifically states that programming "provides not only an orientation to US culture but an opportunity to develop skills in conversational English, both very important to the success of UM international students new to the US."⁵²

Respondent finally contends that Petitioner does not otherwise lessen the burden of the government. As stated in *Wexford*:

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.⁵³

Here, as fully discussed above, at a minimum Petitioner brings its residents' hearts and minds under the influence of education which is lessening the burden of government.

B. Educational Exemption under MCL 211.7n

⁵² Affidavit at 10.

⁵³ *Wexford*, 474 Mich at 219.

In addition to the charitable exemption, Petitioner also claims that it is entitled to an exemption under MCL 211.7n which provides:

Real estate or personal property owned and occupied by nonprofit . . . educational . . . institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act.

In order to qualify for an exemption as an educational institution under MCL 211.7n, Petitioner must meet three criteria:

- (1) The real estate must be owned and occupied by the exemption claimant;
- (2) The exemption claimant must be a nonprofit educational institution, and
- (3) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.⁵⁴

The Court in *Ladies Literary Club*, specified two requirements that must be met in order for an organization to qualify for an educational exemption from taxation:

1. An institution seeking an educational exemption must fit into the general scheme of education provided by the state and supported by public taxation.
2. The institution must contribute substantially to the relief of the educational burden of government.⁵⁵

This standard is substantially different from the standard for a charitable exemption as discussed above. While the line of cases above entitle organizations for charitable exemptions, their educational purposes do not fit into the general scheme of education by the state thereby also entitling them to an educational exemption. Similarly, while the Tribunal has found that Petitioner's activities bring its residents' minds under the influence of education, it is not also entitled to an educational exemption as discussed below.

Respondent again relies upon the Court's ruling in *Telluride*. Specifically, the Court stated:

⁵⁴ *Grosse Pointe Academy v Township of Grosse Pointe*, unpublished opinion per curiam of the Court of Appeals, decided November 2, 2004 (Docket No. 248340), citing *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944). The Tribunal notes that the requirement that the claimant be incorporated under Michigan law is no longer valid, having been found to be unconstitutional as it denied equal protection to institutions registered out-of-state. *OCLC Online Computer Library Center, Inc v City of Battle Creek*, 224 Mich App 608, 612; 569 NW2d 676 (1997), citing *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp*, 186 Mich App 511, 515; 465 NW2d 14 (1990).

⁵⁵ *Ladies Literary Club*, 409 Mich at 755-76.

There is no evidence that, if not for Telluride, the burden on the state would be proportionately increased. *Ladies Literary Club*, 409 Mich. at 755–756. The state and the University of Michigan have no obligation to house students, and the university does not require its students to live on campus. Further, the university's housing system is designed to be self-sustaining and is expected to generate all of its own revenue. It receives no general fund or State of Michigan allocations. Further Telluride's educational programs are not the type of programs traditionally offered by or through the state. Therefore, we hold that the tribunal correctly denied Telluride's claim for an educational institution exemption.⁵⁶

Although Petitioner has demonstrated that it provides more educational opportunities than the petitioner in *Telluride*, it has failed to demonstrate that the educational programming it provides would lessen any burden on the state. Like *Telluride*, the programs bestow a benefit but there is no indication that if not for Petitioner's programs "the burden on the state would be proportionally increased."⁵⁷ Thus, the Tribunal finds that Petitioner has failed to demonstrate that there are genuine issues of fact remaining regarding its entitlement to an educational exemption under MCL 211.7n.

C. Exemption of the Property for the 2015 tax year under MCL 211.53b(1)

In its Petition, filed April 21, 2016, Petitioner has requested an exemption from the payment of property tax for the subject property under MCL 211.7o and/or MCL 211.7n for the 2015 tax year, pursuant to MCL 211.53(b)(1) which states,

If there has been a qualified error, the qualified error shall be verified by the local assessing officer and approved by the board of review. Except as otherwise provided in subsection (9), the board of review shall meet for the purposes of this section on Tuesday following the second Monday in December and on Tuesday following the third Monday in July. If approved, the board of review shall file an affidavit within 30 days relative to the qualified error with the proper officials and all affected official records shall be corrected. If the qualified error results in an overpayment or underpayment, the rebate, including any interest paid, shall be made to the taxpayer or the taxpayer shall be notified and payment made within 30 days of the notice. A rebate shall be without interest. The treasurer in possession of the appropriate tax roll may deduct the rebate from the appropriate tax collecting unit's subsequent distribution of taxes. The treasurer in possession of the appropriate tax roll shall bill to the appropriate tax collecting unit the tax collecting unit's share of taxes rebated. Except as otherwise provided in subsections (6) and (8) and

⁵⁶ *Telluride*, unpub op at 6.

⁵⁷ *Telluride*, unpub op at 6 (citing *Ladies Literary Club*).

section 27a (4), a correction under this subsection may be made for the current year and the immediately preceding year only.

MCL 211.53b (10) defines qualified error to include:

As used in this section, "qualified error" means 1 or more of the following:

- (a) A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes.
- (b) A mutual mistake of fact.
- (c) An adjustment under section 27a (4) or an exemption under section 7hh (3) (b).
- (d) An error of measurement or calculation of the physical dimensions or components of the real property being assessed.
- (e) An error of omission or inclusion of a part of the real property being assessed.
- (f) An error regarding the correct taxable status of the real property being assessed.
- (g) An error made by the taxpayer in preparing the statement of assessable personal property under section 19. [Emphasis added].
- (h) An error made in the denial of a claim of exemption for personal property under section 9o.

There is no indication in the Petition, Answer, Motion or Response regarding what the qualified error for the 2015 tax year was, pursuant to MCL 211.53b (10).⁵⁸ Further, there is no supporting information in the Petition, Answer, Motion, or Response regarding the taxable status of the property in 2015, there is no indication that an application for exemption was submitted for the 2015 tax year or that there was a denial by the Board of Review. Further there is no allegation that Respondent's assessor had previous notice or knowledge as to

⁵⁸ The Tribunal opines the alleged error may be pursuant to MCL 211.53b (10) (f), but no specific section of the statute was put forth.

whether the subject property qualified as exempt, prior to issuing the 2015 assessment. As such, the Tribunal does not find the aforementioned statute applicable.

Conclusion

Given the above, the Tribunal finds that Respondent's Motion with regard to an exemption under MCL 211.7o is denied and summary disposition in favor of Petitioner on this issue is appropriate. However, under MCL 211.7n, Respondent's Motion shall be partially granted. Overall, the Tribunal finds there are no genuine issues of material fact remaining in this case. As such, the Tribunal finds the subject real and personal property to be exempt from the payment of property tax for the 2016 tax year, pursuant to MCL 211.7o, and closes the case.

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is PARTIALLY GRANTED under MCR 2.116(C)(10).

IT IS FURTHER ORDERED that Summary Disposition is PARTIALLY GRANTED in favor of Petitioner under MCR 2.116(I)(2) and the property is exempt from the payment of property tax for the 2016 tax year.

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 provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.⁵⁹ 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

⁵⁹ See MCL 205.755.

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%, and (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 the last pending claim and closes the 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.⁶⁰ 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.⁶¹ 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.⁶² Responses to motions for

⁶⁰ See TTR 261 and 257.

⁶¹ See TTR 217 and 267.

⁶² See TTR 261 and 225.

reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁶³

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.”⁶⁴ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁶⁵ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁶⁶

By Preeti P. Gadola

Entered: July 12, 2017

⁶³ See TTR 261 and 257.

⁶⁴ See MCL 205.753 and MCR 7.204.

⁶⁵ See TTR 213.

⁶⁶ See TTR 217 and 267.