



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Rosemary Roche,
Petitioner,

MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

MOAHR Docket No. 20-004256

v

Case Type: Poverty Exemption

City of St. Clair Shores,
Respondent.

Presiding Judge
Christine Schauer

FINAL OPINION AND JUDGMENT

Location of Hearing: Telephonic
Hearing Held on: February 8, 2021
Appearances on Behalf of Petitioner: Rosemary Roche
Appearances on Behalf of Respondent: Vicky Shipman

SUMMARY OF JUDGMENT

The subject property shall not be granted a poverty exemption for the 2020 tax year.

Given the above, the subject property's taxable value (TV), for the tax year at issue, shall be as follows:

Parcel Number: 09-14-34-337-007

| Year | TV |
|------|----------|
| 2020 | \$39,203 |

PROCEDURAL HISTORY

Petitioner requested a poverty exemption before the 2020 July Board of Review (BOR).

The BOR issued its decision on July 22, 2020.

Petitioner filed a Petition with the Tribunal on August 8, 2020, and Respondent filed an Answer on September 25, 2020.

ISSUES AND APPLICABLE LAW

The issue in this matter is whether Petitioner's property qualifies for a property tax exemption due to reasons of poverty, pursuant to MCL 211.7u.

"In general, tax exempt statutes must be strictly construed in favor of the taxing authority."¹ The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption.²

MCL 211.7u provides, in pertinent part:

- (1) The principal residence of persons, who, in the judgment of the supervisor and board of review, by reason of poverty, are unable to contribute toward the public charges is eligible for exemption in whole or in part from taxation under this act. This section does not apply to the property of a corporation.
- (2) To be eligible under this section, a person shall do all of the following on an annual basis...
 - (e) Meet the federal poverty guidelines published in the prior calendar year in the Federal Register by the United States Department of Health and Human Services under its authority to revise the poverty line under 42 USC 9902, or alternative guidelines adopted by the governing body of the local assessing unit provided the alternative guidelines do not provide income eligibility requirements less than the federal guidelines.

* * *

- (5) The board of review shall follow the policy and guidelines of the local assessing unit in granting or denying an exemption under this section. If a person claiming an exemption under this section is qualified under the eligibility requirements in subsection (2), the board of review shall grant the exemption in whole or in part, as follows:
 - (a) A full exemption equal to a 100% reduction in taxable value for the tax year in which the exemption is granted.
 - (b) A partial exemption equal to 1 of the following:

¹ *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); see also *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753; 298 NW2d 422 (1980).

² See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

- (i) A 50% or 25% reduction in taxable value for the tax year in which the exemption is granted.
- (ii) As approved by the state tax commission, any other percentage reduction in taxable value for the tax year in which the exemption is granted, applied in a form and manner prescribed by the state tax commission.

SUMMARY OF EVIDENCE

A. Petitioner's Evidence

Petitioner's contention of TV:

Parcel Number: 09-14-34-337-007

| Year | TV |
|------|-----|
| 2020 | \$0 |

Petitioner offered the following exhibits:

1. Evidence, filed on September 24, 2020
 - a. 2020 July BOR Change Notice
 - b. 2020 Property Tax Notice – Summer.
2. Evidence, filed on October 14, 2020
 - a. Michigan Department of Health and Human Services Notice of Case Action dated January 4, 2019
 - b. Second Amended and restated Ann J. Roche Trust Agreement dated February 1, 1991.
3. Evidence, filed on November 2, 2020
 - a. Michigan Department of Treasury Explanation of Change dated June 3, 2020
 - b. Income source list
 - c. Michigan Amended Return Explanation of Changes for 2019 tax year
 - d. 2019 Michigan Income Tax Return-Amended Return
 - e. 2019 Michigan Homestead Property Tax Credit Claim
 - f. Social Security Benefit Letter dated August 17, 2020.

No exhibits were excluded from evidence.

Based on the pleadings, admitted exhibits, and sworn testimony, Petitioner contends that she qualifies for a poverty exemption for the subject property.

Petitioner testified that her only income is from Supplemental Security Income (SSI) and Social Security Benefits in the amount of approximately \$800 per month. Petitioner testified that her mother created a special needs trust so that she (Petitioner) could live at the subject property and that her mother is now deceased. Petitioner testified that the

\$400 per month rent payments are sent to her sister to cover Petitioner's bills related to the subject property such as utilities. Petitioner claims that the bills are in her name but are sent to her sister's address and she never sees them. Petitioner testified that she is not capable of budgeting and handling her own money and that her checking account is the only account she has.

B. Respondent's Evidence

The property's TV, as confirmed by the BOR, for the tax year at issue:

Parcel Number: 09-14-34-337-007

| Year | TV |
|------|----------|
| 2020 | \$39,203 |

Respondent offered the following exhibits:

1. Evidence, filed on August 25, 2020
 - a. 2020 July BOR Change Notice.
2. Evidence, filed on January 18, 2021
 - a. Letter from Respondent to Tribunal dated January 18, 2021.

No exhibits were excluded from evidence.

Based on the pleadings, admitted exhibits, and sworn testimony, Respondent initially contended that Petitioner's income exceeded Respondent's guidelines to qualify for an exemption because her Form 1040 showed an income of \$15,228. Additionally, Petitioner did not submit all documents required as a part of Respondent's poverty exemption application. However, Respondent testified that, after speaking with Petitioner's representative, Veronica Eggert, it learned that an error was made on Petitioner's income tax form and Petitioner submitted her bank statement. Respondent claims that there were transfers from Petitioner's bank account to another bank account and Petitioner did not provide any information about or statement from this other account.

Respondent testified that it tried to sort out Petitioner's situation to determine eligibility for the exemption, but Petitioner put on her application that she pays rent and Respondent questions how Petitioner can be the sole beneficiary of the trust that owns the subject property while she is paying rent. Respondent testified that it needed to verify Petitioner's assets given her involvement with potential trust assets but has not been able to do so. Respondent testified that its Poverty Exemption Guidelines contain an asset limit requirement of \$5,000.

During further testimony, Respondent claims that it needed to clarify if Petitioner has additional assets such as funds in another bank account. Respondent testified that Petitioner's checking account balance in the statement provided was \$3,800 but still questions if this is the only account with assets of Petitioner.

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The subject property is located at 22620 Alger in Macomb County.
2. The subject property is classified as residential.
3. Petitioner is not an owner of the subject property.
4. The subject property is owned by Ann J. Roche Trust.
5. Petitioner is a grantee and the sole beneficiary of the Ann J. Roche Trust.
6. Petitioner's sister, Veronica Eggert, is a successor trustee of the Ann J. Roche Trust.
7. Petitioner filed a 2019 Michigan Homestead Property Tax Credit Claim listing payments of \$400 per month in rent to Ann J. Roche Trust for 12 months during 2019 but listing nothing in property tax payments.
8. Petitioner occupied the subject property as a principal residence for the tax year at issue.
9. Petitioner submitted an application requesting a poverty exemption to the July BOR.
10. The number of persons residing in the subject household for the year at issue was one.
11. The "federal poverty guidelines" or alternative guidelines adopted by Respondent for the subject household for the tax year at issue provide for an income level of \$12,490.
12. Petitioner's annual household income pursuant to MCL 211.7u for the year at issue is \$9,540.
13. Respondent has adopted an "asset test" that provides for the maximum value for household assets of \$5,000.
14. The value of Petitioner's household assets are \$3,800.

CONCLUSIONS OF LAW

The following authority and reasoned opinion supports the Tribunal's determination:

Here, the subject property is owned by the Ann J. Roche Trust, which was created by the mother of Petitioner as a special needs trust that would enable Petitioner, who is a developmentally disabled adult, to remain living in the subject property beyond the death of her mother, Ann J. Roche, the grantor of the trust. Petitioner testified that her mother is deceased. The successor trustee of the Ann J. Roche Trust, Veronica Eggert, is Petitioner's sister and was listed on the Petition as Petitioner's Representative but did not appear at the hearing.

Respondent denied the exemption based on two things. First, Petitioner's income reported on her original income tax return was \$15,288 which exceeded the guidelines; and second, Petitioner did not supply complete documentation of her assets for Respondent to determine if she had met the "asset test". Subsequent to its denial,

Respondent learned that an error was made on Petitioner's income tax return where her SSI payments of \$5,688 for 2019 were counted twice. Petitioner provided an amended Michigan income tax return of her actual adjusted gross income as evidence for this hearing and claims that her total 2019 income was \$9,540 and consisted of the \$5,688 from SSI and \$3,852 in Social Security Benefits. The Tribunal finds that Petitioner's income is below the federal poverty guidelines for a household size of one; therefore, Petitioner meets the income requirement of the poverty guidelines.

No documentary evidence of Petitioner's asset level was provided. Respondent testified that Petitioner's bank account statement, submitted to it but not to the Tribunal, showed a balance of \$3,800, but Respondent contends that there may be trust assets that Petitioner is entitled to. However, Petitioner's Representative wrote in the Petition that, "Our mother set up a special needs trust that enables Rosemary to stay in the house on Alger. However[,] she left no funds to maintain the house. She is responsible for all of the bills, electric, gas, taxes, and maintenance."³ As such, the Tribunal is satisfied that Petitioner has no assets other than her own bank checking account with a balance of \$3,800 and therefore is qualified under the "asset test" of Respondent's guidelines.

Petitioner submitted her 2019 Michigan Homestead Property Tax Credit Claim listing payments of \$400 per month in rent to the Ann J. Roche Trust for 12 months during 2019 for a total rent paid of \$4,800; but she listed nothing in property tax payments. While not in evidence, Respondent claims that Petitioner listed rent as an expense on her Poverty Exemption Application as well. This payment of rent by Petitioner to the Ann J. Roche Trust raised the issue of whether Petitioner is an owner of the subject property or is merely renting it as her principal residence. Petitioner testified that the rent was actually paid to the trust via her sister, as Successor Trustee, to cover the "bills" for the house, such as utilities, which are in Petitioner's name but mailed to her sister. Petitioner testified that she is not capable of managing her own financial affairs and her sister has a Power of Attorney. While all of this may be true, the Tribunal finds that Petitioner cannot have it both ways. She cannot claim that she is not paying property taxes and is paying rent by signing a tax form under penalty of perjury that the facts provided there are true, and then also expect to be exempt from paying property taxes as a result of poverty on the same property she claimed to be renting.

All of this begs the question as to whether Petitioner is an owner of the subject property. Ownership for poverty exemption purposes is required under MCL 211.7u(2), which requires the claimant to "own and occupy as a principal residence the property for which an exemption is requested." Because 7u does not define "own" and there is no definitional section applicable to section 7 of the General Property Tax Act (GPTA), the Tribunal finds that it is required to use the dictionary definition. "When a statute does not define a term, [the Court of Appeals] will construe the term according to its common and approved usage."⁴ Further, "[r]esorting to dictionary definitions is appropriate to

³ Petition, at p 2.

⁴ *Jennings v Southwood*, 446 Mich 125, 139; 521 NW2d 230 (1994).

construe the common and approved usage of undefined statutory terms. *Id.* at 139-140.”⁵

Black’s Law Dictionary defines “own” as “To rightfully have or possess as property; to have legal title to.”⁶ The Tribunal finds that this definition seems to require legal title which would mean Petitioner would have the right to convey which she does not by virtue of the trust which states, “the Trustee shall hold the Home Real Estate . . . for the residential use of my daughter, . . .”.⁷ Based on this, the Tribunal finds that even though Petitioner’s income and asset levels meet the guidelines, and she resides at the subject property as her principal residence, Petitioner is not an owner of the subject property as required under MCL.7u, and as such, she is not eligible for a poverty exemption for the subject property. Therefore, the Tribunal upholds Respondent’s contention of the TV of the subject property for the year at issue.

JUDGMENT

IT IS ORDERED that the property’s TV for the tax year at issue shall be as set forth in the Summary of Judgment section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property’s poverty exemption within 20 days of the entry of this Final Opinion and Judgment, subject to the processes of equalization.⁸ 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

⁵ *People v Bobek*, 217 Mich App 524, 529; 553 NW2d 18 (1996).

⁶ *Black’s Law Dictionary* (11th ed).

⁷ *Second Amended and Restated Ann J. Roche Trust Agreement Dated February 1, 1991*, at 3.

⁸ See MCL 205.755.

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%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%, and (xiv) after December 31, 2020, through June 30, 2021, at the rate of 4.25%.

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 Tribunal with the required filing fee within 21 days from the date of entry of the final decision.⁹ 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.¹⁰ You are required to serve a copy of the motion 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.¹¹ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹²

A claim of appeal must be filed with the Michigan Court of Appeals 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."¹³ You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal.¹⁴ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹⁵

⁹ See TTR 261 and 257.

¹⁰ See TTR 217 and 267.

¹¹ See TTR 261 and 225.

¹² See TTR 261 and 257.

¹³ See MCL 205.753 and MCR 7.204.

¹⁴ See TTR 213.

¹⁵ See TTR 217 and 267.

Date Entered by Tribunal:
February 24, 2021

By Christine Schwan