

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

Kalamazoo Regional Chamber Foundation,
Petitioner,

v

MTT Docket No. 310721

City of Kalamazoo,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

OPINION AND JUDGMENT

The issue to be resolved in this case is whether the office building and associated personal property (the subject property) owned by the Kalamazoo Regional Chamber Foundation (Petitioner) is exempt from property taxes levied by the City of Kalamazoo (Respondent) under Section 7n, 7o and 9a of the General Property Tax Act (GPTA), being MCL 211.7n, 211.7o and 211.9a, respectively. Petitioner asserts that the subject property is exempt because Petitioner is a nonprofit charitable and educational institution and that it utilizes the property for charitable and educational purposes. While Petitioner does not have an office at the subject property, it provides office space at the subject property for eight “Foundation” programs and funding for some of the program’s employees. Petitioner asserts that these programs are charitable and educational. According to Petitioner, these programs occupy 29% of the subject property. Given this, Petitioner requests that it be granted a property tax exemption of 29%.

The parties requested that judgment be rendered based on stipulated facts as provided in MCR 2.116(A). The Tribunal finds that the parties have stipulated to facts sufficient to enable a judgment in this matter. Therefore, for the reasons set forth herein, the Tribunal finds that

Petitioner is not an educational or charitable institution and that its request for a property tax exemption must be denied.

The subject property's 2004, 2005 and 2006 true cash values (TCV), state equalized values (SEV), assessed values (AV), and taxable values (TV), as originally established by

Respondent are:

Parcel Number: 06-15-352-025 (Real)

Year	TCV	SEV	AV	TV
2004	\$1,043,400	\$521,700	\$521,700	\$499,684
2005	\$1,033,000	\$516,500	\$516,500	\$511,176
2006	\$1,109,476	\$554,738	\$521,400	\$528,044

Parcel Number: 9021440 (Personal)

Year	TCV	SEV	AV	TV
2004	\$125,600	\$62,800	\$62,800	\$62,800
2005	\$110,400	\$55,200	\$55,200	\$55,200
2006	\$102,000	\$51,000	\$51,000	\$51,000

Petitioner's contentions of value are:

Parcel Number: 06-15-352-025 (Real)

Year	TCV	SEV	AV	TV
2004	\$1,043,400	\$521,700	\$521,700	\$354,776
2005	\$1,033,000	\$516,500	\$516,500	\$362,935
2006	\$1,109,476	\$554,738	\$521,400	\$374,911

Parcel Number: 06-9021440 (Personal)

Year	TCV	SEV	AV	TV
2004	\$125,600	\$62,800	\$62,800	\$44,588
2005	\$110,400	\$55,200	\$55,200	\$39,192
2006	\$102,000	\$51,000	\$51,000	\$36,210

FINAL VALUES

The subject property's 2004, 2005, and 2006 true cash values (TCV), state equalized values (SEV), assessed values (AV), and taxable values (TV), as determined by the Tribunal are:

Parcel Number: 06-15-352-025 (Real)

Year	TCV	SEV	AV	TV
2004	\$1,043,400	\$521,700	\$521,700	\$499,684
2005	\$1,033,000	\$516,500	\$516,500	\$511,176
2006	\$1,109,476	\$554,738	\$521,400	\$528,044

Parcel Number: 9021440 (Personal)

Year	TCV	SEV	AV	TV
2004	\$125,600	\$62,800	\$62,800	\$62,800
2005	\$110,400	\$55,200	\$55,200	\$55,200
2006	\$102,000	\$51,000	\$51,000	\$51,000

PETITIONER’S CASE

Petitioner is a Michigan nonprofit corporation and is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, as amended. Petitioner was formed “in 2002 to carry out the charitable functions for the Kalamazoo Regional Chamber of Commerce.” (Petitioner’s Memorandum of Law and Fact¹, p1) Petitioner operates several “Programs,” each of which “have separate charitable missions, but are united in receiving funding, support, space, and assistance from [Petitioner] in fulfillment of [Petitioner’s] charitable and educational purpose.” (Petitioner’s Brief, 2) These Programs are: Business Education Partnerships, Women’s Business Development Center, Poverty Reduction Initiative, S.C.O.R.E. (Service Corps of Retired Executives), Colleagues International, Leadership Kalamazoo, Jeter’s Leaders, and Southwest Michigan Technical Assistance Center.

Petitioner owns the subject property, which consists of one parcel of real property known as Parcel No: 06-15-352-025, classified as commercial real for property tax purposes, and one parcel of personal property, known as Parcel No: 9021440, classified as commercial personal. The parcel of real property is utilized as an office building. Both parcels of property are located at 346-348 West Michigan Avenue, Kalamazoo, Michigan.

¹ Hereinafter referred to as “Petitioner’s Brief.”

Petitioner has asserted its claim for a property tax exemption for the office building by arguing that it is a charitable institution under MCL 211.7o and an educational institution under MCL 211.7n. Petitioner also seeks an exemption for its personal property under MCL 211.9. However, Petitioner only seeks a partial property tax exemption as:

[Petitioner] leases portions of the Property to certain for profit and non-profit entities and designates other space at the Property for its own use for its Programs. . .The space used by [Petitioner] for its Programs at the Property accounts for 29% of the total property. [Petitioner] seeks a tax exemption on this 29% of the Property. (Petitioner's Brief, p2)

In support of its claim for a 29% tax exemption, Petitioner cites the Michigan Supreme Court's decision in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006). According to Petitioner, in that case:

. . .the Court noted that 13% of Wexford's property was leased to a for-profit entity and was therefore not tax exempt. The Court took the view that Wexford's arguments for tax exemption pertained only to the remaining 87% of the property. Thus, an entity can receive a tax exemption up to the amount of its space it occupies for its charitable purpose. (Petitioner's Brief, p5)

Petitioner also cites *Wexford* in support of its contention that it is a charitable institution. In *Wexford*, the Court set forth the following six-part test to utilize in determining whether an organization is charitable:

- (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. (*Id.*, p215)

In answering this test, Petitioner asserts that (1) it owns the subject property, (2) “[29%] of the property is used for the operation of the Programs; (3) if [Petitioner] is deemed entitled to tax exempt status, it is only on 29% of the Property,” (4) it is a nonprofit corporation, and (5) neither Petitioner. . .nor its Programs charge more for its service than what is needed for its successful maintenance.” (Petitioner’s Brief, p8) However, Petitioner acknowledges that there are still a few questions that must be resolved before it can be determined whether it is entitled to a property tax exemption. These questions are:

- Is the Foundation organized chiefly, if not solely, for charity?
- Are the Programs charitable or educational in nature? More particularly, do the Programs bring peoples minds or hearts under the influence of education; assist people to establish themselves for life; or otherwise lessen the burdens of government?
- Does [Petitioner] serve any person who needs the particular type of charity being offered?
- Does [Petitioner] occupy the property by means of providing its property to the Programs? (Petitioner’s Brief, p8)

In response to the first question, Petitioner points to its Articles of Incorporation, which state, in pertinent part:

The purposes for which the Corporation is organized are as follows:

- (A) To solicit, receive and administer funds for charitable, benevolent and educational purposes.
- (B) To operate exclusively for the benefit of, to perform the functions of and to carry out the charitable and educational purposes of the Kalamazoo County Chamber of Commerce. . . .

According to Petitioner, Respondent does not dispute that Petitioner engages in charitable and educational work. Instead, Respondent's appears to claim that Petitioner's charitable and educational "nature" is not sufficient. (Petitioner's Brief, p9) Petitioner argues that, like the respondent in *Wexford*, Respondent has not pointed to any other reason for Petitioner's existence.

As for the second question, Petitioner argues that it brings peoples' minds or hearts under the influence of education, assists people to establish themselves for life, and lessens the burdens of government through its Business Education Partnerships program. "As teaching the public about an important area of knowledge like World War II aviation is charitable [under] *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709 (1984), teaching students about workforce preparedness is charitable and lessens the burdens of government." (Petitioner's Brief, p10)

Similarly, the "Women's Business Development Center program offers training, consultation services, group support opportunities, information on the latest business trends, and opportunities to work with qualified trainers, business counselors and mentors." (Petitioner's Brief, p11) Petitioner argues that "[t]eaching owners and employees to succeed in the current economy is charitable and lessens the burdens of government." (Petitioner's Brief, p11)

Another of Petitioner's Programs, that being the Poverty Reduction Initiative program, "coordinates the efforts of 14 community-based organizations to effectively combat the causes and impacts of poverty by focusing on helping low-income households to obtain assistance with employment, housing, and transportation issues." (Petitioner's Brief, p11) Moreover, this program is:

. . . motivated by a desire to educate area charity seekers to find charitable services and establish themselves for life. Teaching charity seekers to successfully find

services and helping them connect with those services is charitable and lessens the burdens of government. (Petitioner's Brief, p11)

The Southwest Michigan Technical Assistance Center program is another charitable program that lessens the burdens of government. This program helps area business owners to establish themselves for life by assisting "any business that wants to sell products or services to the local, state or federal governments through training, seminars, bid matches, and one-on-one counseling." (Petitioner's Brief, p11) Like the Southwest Michigan Technical Assistance Center, S.C.O.R.E. offers counseling and training to area businesses, thus allowing business owners to establish themselves for life. At the same time, these Programs are charitable, lessening the burdens of government.

"The Colleagues International program offers young professionals from around the world an opportunity to stay with local host families and learn from visits to peer business or non-profit organizations." (Petitioner's Brief, p12) Petitioner asserts that teaching professionals about international business and nonprofit issues is charitable and lessens the burdens of government.

Petitioner's program, known as "The Leadership Kalamazoo" program, provides "the southwest Michigan area with an on-going source of motivated leaders from diverse backgrounds, educated about the community and its issues." (Petitioner's Brief, p12) According to Petitioner, teaching area professionals about their community and how to be leaders is not only charitable, it lessens the burdens of government.

Petitioner's final program, Jeter's Leaders, "is a youth leadership program that gives participants opportunities to learn more about themselves and the community, as well as community service programs." (Petitioner's Brief, p13) Again, by educating area students, Jeter's Leaders helps them to establish themselves for life. Petitioner argues that this program is not only charitable, it lessens the burdens of government.

Petitioner answers the third question, that being whether it serves any person who needs the particular type of charity being offered, in the affirmative. Petitioner asserts that The Business Education Partnership, The Southwest Michigan Technical Assistance Center, the S.C.O.R.E. program, and the Poverty Reduction Initiative are available to the general public. The Colleagues International program, Leadership Kalamazoo, and Jeter's Leaders are open to anyone "who qualifies for the type of educational service offered." (Petitioner's Brief, p13)

According to Petitioner, it "occupies the Property by means of providing its Property to the Programs," which means that the fourth question is also answered in the affirmative. In support of its position, Petitioner cites *Pheasant Ring, a/k/a Homes for Autism, v Township of Waterford*, 272 Mich App 436; 726 NW2d 741 (2006), wherein the Michigan Court of Appeals held: "The proper test is whether the entire property [is] used in a manner consistent with the purpose of the owning institution." (*Id.*, p442)

In this case, [Petitioner] provides space and employees to its Programs at the Property. It uses the Property to house its charitable programs in furtherance of its mission and uses its resources at the Property to act as fiduciary to its Programs. As in *Pheasant Ring* where the owning institution rented its property to third parties in furtherance of its mission, [Petitioner] occupies its Property in furtherance of its charitable purpose by providing space for its own programs. (Petitioner's Brief, p14)

In addition to the exhibits submitted by the parties with their Stipulation of Facts, Petitioner submitted the following exhibits:

- A. A list of Chamber Positions, including a designation as to whether the position was full time or part time, and a list of duties for each position.
- B. A list of Petitioner's members for the 2006-2007 fiscal year.
- C. The Bylaws of the Southwest Michigan Leadership Foundation.
- D. A brochure for Petitioner's Second Century Campaign.

- E. A list of Petitioner's Programs.
- F. A list of the Kalamazoo Regional Chamber Programs.
- G. A summary of the businesses and organizations with office space in the subject property.
- H.
 - 1. A Lease between Petitioner and the Kalamazoo Regional Chamber of Commerce, dated July 31, 2006, for office space within the subject property.
 - 2. A Lease between Petitioner and Welsh & Associates, Inc., dated October 1, 2004.
 - 3. A Lease Agreement between Petitioner and First National Bancorp, Inc., dated November 17, 2005.
 - 4. A Lease between the Kalamazoo County Chamber of Commerce and Southwest Michigan First Corporation, dated January 1, 2000.
 - 5. A letter from Colleagues International, Inc. to the Chamber of Commerce, dated September 7, 1999.
 - 6. A letter from the Kalamazoo Chamber of Commerce to W.E. Upjohn Institute/Michigan Works!, dated February 22, 2002.
 - 7. A letter from W.E. Upjohn Institute/Michigan Works! to the Kalamazoo Chamber of Commerce, dated January 15, 2002.
 - 8. A letter from Western Michigan University to the Kalamazoo County Chamber of Commerce, RE: OBDA lease, dated October 25, 1999.
 - 9. A Vendor Contract between the Kalamazoo County Chamber of Commerce and Western Michigan University.
- I.
 - 1. Kalamazoo Regional Chamber of Commerce Balance Sheet, dated June 30, 2006.
 - 2. Kalamazoo Regional Chamber of Commerce Income statement for two months, ending June 30, 2006.

3. Audit Report of the Kalamazoo County Chamber of Commerce, dated April 30, 2002.
 4. Consolidated Audit Report of the Kalamazoo County Chamber of Commerce and the Southwest Michigan Leadership Foundation, dated April 30, 2003.
 5. Consolidated Audit Report of the Kalamazoo County Chamber of Commerce and Petitioner, dated April 30, 2004.
 6. Consolidated Audit Report of the Kalamazoo County Chamber of Commerce and Petitioner, dated April 30, 2005.
 7. Audit Report of the Kalamazoo Regional Chamber Foundation, dated April 30, 2006.
- J.
1. IRS Form 990 for 2002
 2. IRS Form 990 for 2003.
 3. IRS Form 990 for 2004.
 4. IRS Form 990 for 2005.
 5. IRS Form 8734, dated July 26, 2006.
 6. IRS letter to Southwest Michigan Leadership Foundation, informing the Foundation that it has been determined to be exempt under Section 501(c)(3) of the Internal Revenue Code.
 7. IRS letter to Petitioner, informing Petitioner that it has been determined to be exempt under Section 501(c)(3) of the Internal Revenue Code and that it is classified as a public charity under Section 509(a)(2).
 8. Certificate of Amendment to Petitioner's Articles of Incorporation, dated October 29, 2003.

K. A quitclaim deed transferring ownership of a parcel of property known as 346 West Michigan Avenue, Kalamazoo, Michigan, from the Kalamazoo Regional Chamber of Commerce to the Southwest Michigan Leadership Foundation.

RESPONDENT'S POSITION AS TO PETITIONER'S CASE

In response to Petitioner's argument under *Wexford, supra*, that Respondent has not pointed to any other reason for its existence, other than for charitable and educational purposes, Respondent argues that the only reason Petitioner was created by the Kalamazoo Chamber of Commerce was to claim various tax exemptions, one of which is a property tax exemption. According to Respondent, Petitioner's creation was necessary as the Chamber does not qualify for this exemption. Respondent further asserts that even though this is Petitioner's reason for being, it fails to qualify as a charitable institution under MCL 211.7o and, as such, the subject property is not exempt from property tax. Respondent sets forth three reasons for this position.

First, Petitioner does not meet the requirement that the real estate must be owned and occupied by the exemption claimant.

Second, the Chamber and [Petitioner] are essentially the same corporate entity, i.e., [Petitioner] is a mere instrumentality of the parent corporation (the Chamber), which was created solely for the purpose of attempting to claim a tax exemption. Since the Chamber is not tax exempt, [Petitioner] cannot be exempt.

Third, the Programs for which [Petitioner]/Chamber provide some support are not charitable or educational [entities] pursuant to Michigan tax law. (Respondent's Brief, p2)

In support of its argument that Petitioner does not occupy the subject property, Respondent cites *Wexford, supra*, wherein the Court reiterated the requirement that the entity claiming a charitable exemption must not only own the property for which the exemption is claimed, it must also occupy the property. Respondent asserts that Petitioner cannot occupy the subject property because it has no employees.

In other words, not only does the Foundation have no employees in the subject building at any time, it simply has no employees, period. Rather, the scheme that the Chamber has set up is to have Chamber employees work at the subject property on a daily basis and then these Chamber employees receive paychecks from the Chamber. The Chamber then basically makes bookkeeping entries to make it appear that [Petitioner] is paying for this expense. . . .

The only persons in the subject property on a day-to-day basis that are somewhat affiliated with [Petitioner] are Chamber employees who also happen to be [Petitioner] officers or directors, but again, they are not employees of [Petitioner]. Accordingly, all of the Programs that [Petitioner] allegedly operates that causes it to claim that it qualifies for an exemption are staffed by Chamber employees or Chamber volunteers, and therefore the [Petitioner] does not occupy the subject property. In fact, the only time that true [Petitioner] activities appear to take place is when [Petitioner] has periodic board meetings to maintain its bare corporate existence. (Respondent's Brief, p4)

In support of its argument that Petitioner is a mere instrumentality of the Chamber of Commerce, Respondent cites Petitioner's answer to an interrogatory wherein Petitioner admitted that it does not operate any of the Programs. Additionally, Respondent asserts that the Programs are not Petitioner's Programs for if they were Petitioner would not charge them rent or claim an in-kind contribution. "Indeed, if these Programs were truly [Petitioner's] Programs, there would be no need to have any type of rental agreement or to list in-kind rental on balance sheets or tax returns." (Respondent's Brief, p6)

Another indication that Petitioner is a mere instrumentality of the Chamber of Commerce is the fact that the Chamber is Petitioner's only member. Thus, "basically with a snap of its fingers the Chamber could terminate [Petitioner's] existence at any time." (Respondent's Brief, p6) Moreover, even though the Chamber quitclaimed the subject property to Petitioner in 2002, there was no written lease between Petitioner and the Chamber for that portion of the subject property occupied by the Chamber until July 31, 2006.

In response to Petitioner's claim that it is an educational institution and that the subject property is entitled to an exemption under MCL 211.7n, Respondent cites *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 737 (1948). In that case, the Court held that to qualify for an educational exemption, the claimant's course of study must fit into the general scheme of education provided by the State and supported by public taxation. (*Id.*, p153)

Respondent also relies on the Court of Appeals decision in *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709; 346 NW2d 862 (1984), wherein the court further refined the test. "To qualify as a tax-exempt educational institution, the museum must fit into the general education scheme provided by the state and supported by taxation, so that it makes a substantial contribution to the relief of the burden of the government in educating the people." (*Id.*, pp713-714) Respondent argues that the Programs neither fit into the general scheme of education provided by the State and supported by public taxation nor make a substantial contribution to the relief of the government's burden.

According to Respondent, the Programs cited by Petitioner are, in fact, not Petitioner's as most of the Programs were in existence prior to 2002 when Petitioner was created. Respondent also disagrees with Petitioner's characterization of the Programs as either being educational or charitable. To prove this point, Respondent submitted website pages for the Programs, some of which were accessed through the Chamber of Commerce's website, not Petitioner's.

Respondent makes the following observations as to the Programs:

- Colleagues International:

Bringing professionals from abroad to work with local professionals hardly seems to fit in with the definition of "charity" pursuant to Michigan tax law. It is difficult to argue that bringing international professionals together somehow relieves people from disease, lessens the burdens of government, etc. Rather, it appears that this helps international business professionals learn from each other to become more profitable.

Colleagues International also is obviously not an educational institution although it does apparently offer some training. . . Even if an entity's activities focus on cooperative education which are both commendable and of benefit to the participants, it cannot be said that such programs [] "sufficiently relieve the government's educational burden to warrant the claimed education-institution exemption." (Respondent's Brief, p11)

- Jeter's Leaders:

According to Jeter's Leader's website: "The Jeter's Leaders Program in the Greater Kalamazoo area is administered by the Kalamazoo Regional Chamber of Commerce."

Thus, the program is run by the Chamber of Commerce, not Petitioner. Respondent argues that because the program is limited to 35 students, even if it is considered to be charity, it is not offered for the benefit of an indefinite number of people.

- S.C.O.R.E.:

In addition to the fact that the Tribunal previously held that S.C.O.R.E. is not a charitable institution (See Stipulation of Facts §27), Respondent argues:

[Petitioner's] website describes the Service Corps of Retired Executives (S.C.O.R.E.) as follows: "S.C.O.R.E. is a group of retired executives with a variety of business experiences who have volunteered to assist entrepreneurs to start a new business, purchase a business, or increase the profitability of existing businesses. This assistance includes counseling in the preparation of a business plan, financial analysis, marketing, management, capital acquisition, and loan application. S.C.O.R.E. also sponsors business seminars and workshops." . . . It appears therefore that the primary purpose of S.C.O.R.E. is to assist people in business. Of course, there is nothing wrong with that, but assisting entrepreneurs to start a new business, purchasing a business, or increase the profitability of a business is clearly not charitable. (Respondent's Brief, p13)

- Business and Education Partnership:

A web search for Business and Education Partnership program yields the following, which is found at the Chamber website:

The Kalamazoo Regional Chamber of Commerce Business and Education Partnership program successfully links business leaders

with educators and students to better prepare them for tomorrow's evolving workplace. Our business and education partnerships have proven critical in dramatically increasing student's understanding and awareness of the fantastic opportunities available in our sophisticated world of work!

Accordingly, this is a Chamber program, and not a Foundation program, and again this is further evidence of the fact that the foundation is a mere instrumentality of the Chamber. . .Further, similar with S.C.O.R.E., the primary purpose of the Business and Education Partnership is assisting people in business. Again, there is nothing wrong with that, but this clearly is not charity. (Respondent's Brief, p14)

Respondent further argues that this Program does not fit into the general scheme of education provided by the state and supported by public taxation, and does not lessen the burdens of government.

- Leadership Kalamazoo:

According to Respondent, the Leadership Kalamazoo program is also found on the Chamber of Commerce's website, not Petitioner's. Respondent compares this program to that of Jeter's Leaders because it is limited to a very small number of participants per year, approximately 30. "Further, participants must have the full support of their employer. Accordingly, it appears that Leadership Kalamazoo is limited to a select group of business executives." (Respondent's Brief, p16) Finally, Respondent argues that this Program does not fit into the general scheme of education provided by the state and supported by public taxation, and does not lessen the burdens of government.

- Southwest Michigan Technical Assistance Center:

A review of the website of the Southwest Michigan Technical Assistance Center discloses the following: "Together John DiGiacomo and Jim Kleckner have over 65 years of experience in the government-contracting field helping more than 6,000 businesses in 14 states secure government contract collectively valued at over \$2 million."

It is apparent that the purpose of the Southwest Michigan Technical Assistance Center is to assist small businesses in winning government contracts.
(Respondent's Brief, p16)

Again, Respondent argues that this Program does not fit into the general scheme of education provided by the state and supported by public taxation, and does not lessen the burdens of government.

- Women's Business Development Center:

Like the Leadership Kalamazoo program, the Women's Business Development Center program is also found on the Chamber of Commerce's website. The website indicates that "the WBDC offers business counseling, business development and professional development seminars monthly. First Thursday seminars focus on business development issues." . . . it is apparent that the purpose of the WBDC is to assist women [in business], obviously to help these businesses become more profitable. This may be educational in nature to some degree, but it clearly does not meet the letter and spirit of the educational exemptions."
(Respondent's Brief, p17)

- Kalamazoo Poverty Reduction Initiative:

According to Respondent, the Kalamazoo Poverty Reduction Initiative program website describes itself as:

. . . a community change agent and does not operate direct service programs. The PRI role in community change involves planning, leadership, facilitation, and resource development. The initiative sees its role as a catalyst that will help the community identify poverty-related issues and help coordinate, integrate and enhance current poverty reduction efforts, with clear lines of accountability.
(Respondent's Brief, p17)

With this, Respondent argues that "the PRI seems to be the only one of the Programs which is arguably truly charitable. However, PRI does not own and occupy the subject premises. . . ." (Respondent's Brief, p17) Moreover, because PRI assists charities but does not operate them, it is not a charity.

In closing, Respondent argues that Petitioner does not occupy the subject property and that many of the Programs that Petitioner claims occupy the subject property are, in fact, those of the Chamber of Commerce. Finally:

It is apparent that the general theme of these programs is to assist business executives and leaders in increasing their profitability or their standing in the community, which is consistent with the overall mission of the Kalamazoo Regional Chamber of Commerce, i.e., to advocate for business. To hold that these Programs meet the requirements of the educational or charitable exemption is tantamount to stating that any organization that offers seminars or training to increase profitability is a charity or educational institution. (Respondent's Brief, p18)

In support of its claims, Respondent submitted the following exhibits:

- A. Petitioner's response to Respondent's Interrogatories and Request for Production of Documents, dated November 8, 2004.
- B. A web page of Colleagues International, titled "About Us."
- C. A web page of Colleagues International containing the program's By-Laws.
- D. A web page describing the Abyssinian Development Corporation's programs (related to Jeter's Leaders).
- E. A web page providing an Overview of Jeter's Leaders.
- F. A web page for S.C.O.R.E., titled "Ask SCORE for Business Advice."
- G. A web page for the Business and Education Partnership program.
- H. A web page for Leadership Kalamazoo.
- I. A web page for Win Government Contracts, titled "About Us," and featuring John DiGiacomo and Jim Kleckner.
- J. A web page about the Women's Business Development Center.
- K. A web page titled "Overview of the Poverty Reduction Initiative."

PETITIONER'S REPLY TO RESPONDENT'S BRIEF

In response to the issues raised in Respondent's Brief, Petitioner acknowledges that some of the Chamber of Commerce's programs were not charitable or educational, while others were. "Ultimately, it was the conclusion of the Chamber that its charitable and educational programs, and the individuals that those programs served and benefitted, would be better off if those programs were housed in a separate and distinct charitable organization." (Petitioner's Reply Brief, p2) Additionally, the Chamber's inability to qualify for 501(c)(3) status was a detriment to those programs and their ability to raise funds. For these reasons, the Chamber created Petitioner and moved the Programs into Petitioner's organization. Petitioner further acknowledges that some of the Programs were not previously Chamber programs, but that now all of the Programs are housed within Petitioner.

As for the subject property, Petitioner argues that the Chamber occupies a smaller percentage of the property than does Petitioner. Given this, it was logical to transfer ownership of the subject property to Petitioner.

Petitioner asserts that, even though it has no employees of its own, it occupies the subject property. "While [Petitioner] does not have a separate office, it utilizes significant portions of the office space in the subject property to house its Programs." (Petitioner's Reply Brief, p3)

[Respondent] also claims that because [Petitioner] has no employees of its own, it cannot operate any Programs. The fact is, [Petitioner], like many other for-profit and non-for-profit entities, subcontracts the administration and staffing of its Programs to a third-party entity. In this case, that entity is the Chamber, but it could just as easily be a different third-party entity. More importantly, [Petitioner] has a board of directors that is separate and distinct from the Chamber's board, and it is [Petitioner's] board that directs the activities of these Programs through the administrators with which it has contracted. (Petitioner's Reply Brief, p4)

Petitioner further asserts that “there is nothing in any statute or case that suggests that it is impermissible to consider tax consequences at the time of formation of a charitable entity.”

(Petitioner’s Reply Brief, p6) Moreover, Petitioner claims that “it is impermissible to consider whether the entity claiming an exemption has as its shareholders or benefactors a for-profit entity.” (Petitioner’s Reply Brief, p7) In support of this position, Petitioner cites *UAW-Ford National Education Development and Training Center v City of Detroit*, unpublished opinion per curiam of the Court of Appeals, decided March 11, 2004, (Docket No. 242809), wherein the court held:

The statute focuses on the structure of the organization leasing the property and the use of the property, not the tax-paying characteristics of the shareholders or benefactors. In this regard, respondent is urging this Court to impose an additional test not contained in the statute, which we decline to do. *Id.*

According to Petitioner, Respondent would have the Tribunal create the following new statutory requirements:

- One, a charitable institution must provide direct services to consumers or charitable services. No legal or statutory support.
- Two, a charitable institution must found the programs it runs. No legal or statutory support.
- Three, a charitable institution must administer programs exclusive of the involvement or management of any outsiders. No legal or statutory support. (Petitioner’s Reply Brief, p12)

Because these new tests have no legal or statutory support, Petitioner urges the Tribunal to focus on “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 benefit of an indefinite number of persons,” as required by *Michigan United Conservation Clubs v Township of Lansing*, 423 Mich 661, 673; 378 NW2d 737 (1985). (Petitioner’s Brief, p12)

Finally, Petitioner argues that because its “sole purpose and activity is to staff, fund, house and support charitable programs. . .” it is a charitable institution. To prove this point, Petitioner responded to Respondent’s comments regarding the Programs.

- *Colleagues International:*

Petitioner argues that this program does much more than that noted by Respondent.

By its very nature it is educational and charitable and motivated by a desire to educate young professionals about business in order to allow them to establish themselves for life. Moreover, teaching Michiganians about international business and nonprofit issues in order to promote internationalism and cultural exchange is charitable and lessens the burdens of government. (Petitioner’s Reply Brief, p13)

- Jeter’s Leaders:

[Petitioner] fulfills its charitable purpose by housing, administering the funds, staffing, and acting as the fiduciary for Jeter’s Leaders. Jeter’s Leaders is not made non-charitable because it has a limited number of vacancies. Nursing homes have limited capacity; Soup Kitchens have limited seating and limited amounts of soup at each meal; Hospitals have limited beds. The Jeter’s Leaders program has determined that in order to serve its charitable purpose it must necessarily be limited to a certain number of participants at any given time. This is no different [than] a nursing home or a soup kitchen. (Petitioner’s Reply Brief, p14)

Through Jeter’s Leaders, community leadership is cultivated and the community is enriched through the student facilitators. “Community change effected by the participants in Jeter’s Leaders touches an indefinite number of people.” (Petitioner’s Reply Brief, p14) Additionally, Petitioner argues that charitable institutions are not required to provide services directly to those who need the charitable services. Petitioner cites the United Way as a charitable institution that provides charitable services through administration, funding and collaboration with others in the community.

- S.C.O.R.E.:

Petitioner acknowledges that S.C.O.R.E. is partially funded by the umbrella S.C.O.R.E. operation and that volunteers staff the program at the subject property. However, Petitioner asserts that this does not mean that S.C.O.R.E. is not a charitable entity. As for the Tribunal's decision in MTT Docket No. 305710, Petitioner asserts that the Tribunal concluded that S.C.O.R.E. was not charitable because S.C.O.R.E. "presented bald assertions without authority or evidence." (Petitioner's Reply Brief, p16) Petitioner argues that the previous Tribunal decision should not impact the Tribunal in this case.

- Leadership Kalamazoo:

Like Jeter's Leaders, Leadership Kalamazoo's annual class is limited; however, Leadership Kalamazoo has periodic educational programs open to interested parties. Petitioner argues that Leadership Kalamazoo's true purpose is that of a community change agent.

- Poverty Reduction Initiative:

Petitioner argues that Poverty Reduction Initiative does not have to provide its charitable services directly to the general public to be considered charitable. "The Poverty Reduction Initiative does provide direct educational and charitable services to participants." (Petitioner's Reply Brief, p18) Additionally, even if this program were considered to be only a community change agent, this determination does not preclude it from being deemed charitable.

- Business and Education Partnership; Southwest Michigan Technical Assistance Center; and Women's Business Development Center:

Citing *Kalamazoo Aviation History Museum, supra*, Petitioner argues that "[t]he Michigan Court of Appeals has stated repeatedly that an institution which educates the

public so as to *enhance its understanding of a worthwhile subject* can qualify as a tax exempt charitable institution.” (Emphasis in original.) (Petitioner’s Reply Brief, p15) In addition to World War II aviation, Petitioner argues that vocational training is also a worthwhile subject. (See *UAW-Ford, supra*) “Thousands of high school, community college, and university students and faculty would disagree with the City’s suggestion that learning about business is not a worthwhile area of knowledge. One might even argue that it is at least as important as World War II aviation.” (Petitioner’s Reply Brief, p16)

In closing, Petitioner argues that it meets the test for charitable institutions set forth in *Wexford, supra*, and that it “educates the public so as to enhance its understanding of a worthwhile subject” much like the Kalamazoo Aviation History Museum. (Petitioner’s Reply Brief, p18) Petitioner requests that 29% of the subject property be granted a property tax exemption.

Petitioner filed these additional exhibits:

1. Petitioner’s Answers to Second Interrogatories and Request for Production, dated August 18, 2006.
2. Affidavit of David Sanford, Petitioner’s Director-at-Large, dated December 14, 2006.
3. Affidavit of David Sanford, Petitioner’s Director-at-Large, dated January 18, 2007.
4. Affidavit of David Sanford, Petitioner’s Director-at-Large, dated January 29, 2007

RESPONDENT’S REPLY TO PETITIONER’S BRIEF

In its Reply Brief, Respondent reiterates that Petitioner does not occupy the subject property. While the Programs are housed at the subject property, the employees of the Programs

are those of the Chamber of Commerce. Petitioner merely reimburses the Chamber for the services provided by these employees.

Even if that were not the case, Respondent argues that none of the programs qualify as educational programs. None of the programs confer degrees and while this is not the only test, the Programs do not fit into the general scheme of education provided by the state and supported by public taxation. Furthermore, none of the Programs substantially contribute to the relief of the government's burden as required in *Kalamazoo Aviation History Museum, supra*. Instead, "the general theme of these programs is to assist business executives and leaders or students in increasing their profitability or their standing in the community, which is consistent with the overall mission of the Kalamazoo Regional Chamber of Commerce, i.e., advocate for business." (Respondent's Reply Brief, p4) However, "something more than serving the public interest is required to bring one claiming an exemption as an educational institution within the goals and policies affording a tax exemption." (*Ladies Literary Club*, pp754-755)

Respondent further argues that none of the Programs qualify as charitable programs. In support of this theory, Petitioner cites the definition of charity provided by the Michigan Supreme Court in *Wexford, supra*.

Charity is defined as "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." (*Id.*, p211)

Respondent states that Petitioner's only plausible argument is that the Programs assist individuals to establish themselves for life. However, "to claim that assisting business become more profitable is a 'charity' clearly does not meet the spirit of the charitable exemption test." (Respondent's Reply Brief, p6)

Respondent submitted the following additional exhibits:

1. Pages 1 and 6 of Petitioner's Answers to Second Interrogatories and Request for Production, dated August 18, 2006.
2. A list and description of five of the Kalamazoo Regional Chamber Foundation Programs.
3. An affidavit of Constance Darling, Respondent's assessor, dated January 16, 2007.

STIPULATED FACTS

The parties stipulated to the following facts and statements:

1. Throughout the Stipulated Facts there will be references to various programs located at the subject property. [Petitioner] claims that it sponsors, supports and funds these programs and that they are charitable or educational in nature. [Respondent] claims that while [Petitioner] provides some support and funding for these programs, most of these programs existed prior to the creation of [Petitioner] in 2002, and the fact that [Petitioner] leases space to those programs is evidence that [Petitioner] only provides support for these programs, and they are therefore not truly "[Petitioner's] programs."
2. [Petitioner] was created by the Kalamazoo Regional Chamber of Commerce (hereinafter "Chamber").
3. [Petitioner] is classified by the Internal Revenue Service as a public charity as defined by 509(a)(2) of the Internal Revenue Code.
4. [Petitioner] is recognized as a tax exempt organization by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code.
5. [Petitioner] is a domestic non-profit corporation organized and existing under the laws of the State of Michigan.
6. [Petitioner] was created in February 2002 by the Chamber.
7. One of the anticipated results of the creation of [Petitioner] was the ability of [Petitioner] to utilize available tax deduction and exemption opportunities.
8. Pursuant to Section 3:1 of [Petitioner's] bylaws, the Chamber of Commerce, as the sole member, elects [Petitioner's] board members and has mandated representation on [Petitioner's] Board. Further, the Chamber of Commerce can dissolve [Petitioner] by casting the sole vote on a motion to dissolve [Petitioner].

9. The property located at 346-348 West Michigan Avenue, in the City and County of Kalamazoo, (hereinafter “subject property”) is owned by [Petitioner].
10. Although [Petitioner] was created in February 2002 and the Chamber quit-claimed the Chamber building property to [Petitioner] on December 31, 2002, the Chamber has continually occupied the building. There was no written lease memorializing [Petitioner’s] lease of the subject property to the chamber of Commerce until July 31, 2006.
11. One of the reasons that the Chamber of Commerce quit-claimed the subject property to [Petitioner] was to claim a tax exemption.
12. The subject property was acquired from the Chamber by quit-claim deed on December 31, 2002.
13. [Petitioner] uses the subject property for lease to certain entities and for the operation of the Programs as explained more fully below.
14. [Petitioner] has no employees, and does not have a separate office in the subject property apart from the office space that houses the Programs.
15. [Petitioner] and Chamber have some officers and directors in common and some that are not in common. The officers or directors of [Petitioner] who are present at the subject property daily are all Chamber employees. The Program activities are carried out either by community volunteers or dedicated Chamber employees.
16. [Petitioner] provides rent free office space to the Business Education Partnerships in the form of an in-kind credit.
17. [Petitioner] pays the compensation for the employees that do the work of the Business Education Partnerships program.
18. [Petitioner] provides rent free office space to the Women’s Business Development Center.
19. [Petitioner] pays the compensation for the employees that do the work of the Women’s Business Development Center program.
20. [Petitioner] provides rent free office space to the Poverty Reduction Initiative.
21. [Petitioner] pays the compensation for the employees that do the work of the Poverty Reduction Initiative program.

22. [Petitioner] provides office space to the Southwest Michigan Technical Assistance Center.
23. Any rent paid by the Southwest Michigan Technical Assistance Center program is credited back to the Southwest Michigan Technical Assistance Center program in the form of an in-kind credit.
24. [Petitioner] pays the compensation for the employees that do the work for the Southwest Michigan Technical Assistance Center program.
25. [Petitioner] provides rent free office space to its program the Service Corps of Retired Executives (S.C.O.R.E.).
26. The S.C.O.R.E. program is operated by unpaid volunteers.
27. The Michigan Tax Tribunal denied a tax exemption request by S.C.O.R.E., which is one of the Programs, in 2005 (Docket No. 305710).
28. [Petitioner] provide rent free office space to Colleagues International.
29. [Petitioner] provides rent free office space to Leadership Kalamazoo.
30. [Petitioner] pays the compensation for the employees that do the work of the Leadership Kalamazoo program.
31. [Petitioner] provides office space to Jeter's Leaders.
32. Rent paid by the Jeter's Leaders program to [Petitioner] is paid at below market rent. [Petitioner] provides the unpaid portion of the rent as an in-kind credit.
33. [Petitioner] pays for the employees that do the work of the Jeter's Leaders program.
34. The Programs that [Petitioner] claims are charitable or educational under Michigan tax law utilize 29% of the Chamber Building. . .Further, [Petitioner] is not claiming that the remaining 71% of the Chamber building is used for charitable, educational or scientific purposes pursuant to Michigan tax law.
35. Details regarding the Programs are laid out in Exhibit 13.
36. The following for-profit entities pay rent to [Petitioner]:
 - a. Kalamazoo County Chamber and Visitors Bureau--\$81,305.00 annually;
 - b. Chamber--\$111,790.00 annually;
 - c. Welsh & Associates--\$11,412.00;

- d. 1st National Bank--\$67,533.00 annually.
37. The base of operations for each of the Programs is at 346-348 West Michigan Avenue, Kalamazoo, Michigan, the subject property.
38. The square footage space occupied by each of the Programs located at the subject property, are as set forth on Exhibits 12 and 14. . .On a square footage basis, the above-described Programs occupy 29 percent of the square footage of the building located on the subject property. A breakdown of the space occupied by each Program can be found on. . .Exhibits 12 and 14.
39. At least 29 percent of the square footage of the parking in [Petitioner's] adjacent parking lot (located on the subject property) is allocable to and utilized by the Programs.
40. At least 29 percent of the personal property owned by [Petitioner] located in the subject property is allocable to and utilized by the above-described [] Programs.
41. The following paragraphs describing the Programs are taken from [Petitioner's] Second Century Campaign promotional literature.
42. The following paragraph describes the activities of the Business Education Partnerships program supported, sponsored and funded by [Petitioner]:

To better prepare area students today for tomorrow's workforce, the Chamber partners with the Education for Employment (EFE) program and Junior Achievement to provide opportunities for students and teachers to learn more about the expectations of today's employers. More than 4,000 students from school systems throughout the county are served each school year, and up to 20 teachers make job-site visits at businesses each summer, to assist them in lesson planning, through the Voyager program.

43. The Business Education Partnerships program is a non-profit entity. Petitioner contends that this program is charitable and educational in nature. Respondent stipulates that this program performs activities that are somewhat charitable and educational in nature. However, Respondent is not stipulating that this program meets the test of the charitable and educational exemption set forth in MCL 211.7o and MCL 211.7n, respectively.
44. The following paragraph describes the activities of the Women's Business Development Center (WBDC) program:
- The Center provides innovative solutions designed to address the changing needs of business women in southwest Michigan. The

WBDC is recognized as a premier resource, offering valuable training, consultation services, group support opportunities and information on the latest business trends. Participants have opportunities to work with qualified trainers, business counselors and mentors.

45. The Women's Business Development Center is a non-profit entity. Petitioner contends that this program is charitable and educational in nature. Respondent stipulates that this program performs activities that are somewhat charitable and educational in nature. However, Respondent is not stipulating that this program meets the test of the charitable and educational exemption set forth in MCL 211.7o and MCL 211.7n, respectively.

46. The following paragraph describes the activities of [Petitioner's] Poverty Reduction Initiative Program:

One of the newest programs housed in [Petitioner] is the Poverty Reduction Initiative. This program coordinates the efforts of 14 community-based organizations to effectively combat the causes and impacts of poverty. It currently is focusing on helping low-income households to obtain assistance with employment, housing, and transportation issues. Rather than creating a new organization to address these issues, the Initiative strives to avoid duplication of local programs. It coordinates the existing poverty reduction efforts already in place among all 14 participating organizations.

47. The Poverty Reduction Initiative Program is a non-profit entity. Petitioner contends that this program is charitable and educational in nature. Respondent stipulates that this program performs activities that are somewhat charitable and educational in nature. However, Respondent is not stipulating that this program meets the test of the charitable and educational exemption set forth in MCL 211.7o and MCL 211.7n, respectively.

48. The following paragraph describes the activities of the Southwest Michigan Technical Assistance Center program:

The Technical Assistance Center assists businesses who want to sell products or services to the local, state or federal governments. The services to area businesses include training, seminars, bid matches, and one-on-one counseling.

49. The Southwest Michigan Technical Assistance Center is a non-profit entity. Petitioner contends that this program is charitable and educational in nature. Respondent stipulates that this program performs activities that are somewhat charitable and educational in nature. However, Respondent is not stipulating

that this program meets the test of the charitable and educational exemption set forth in MCL 211.7o and MCL 211.7n, respectively.

50. The following paragraph describes the activities of the Service Corps of Retired Executives (S.C.O.R.E.) program:

S.C.O.R.E. offers business counseling and training to start-ups and existing business owners. They are a partner with the U.S. Small Business Administration.

51. The Service Corps of Retired Executives (S.C.O.R.E.) program is a non-profit entity. Petitioner contends that this program is charitable and educational in nature. Respondent stipulates that this program performs activities that are somewhat charitable and educational in nature. However, Respondent is not stipulating that this program meets the test of the charitable and educational exemption set forth in MCL 211.7o and MCL 211.7n, respectively.

52. The following paragraph describes the activities of the Colleagues International program:

Colleagues is an international exchange program that offers young professionals from around the world an opportunity to stay with local host families, and learn from visits to peer business or non-profit organizations.

53. The Colleagues International program is a non-profit entity. Petitioner contends that this program is charitable and educational in nature. Respondent stipulates that this program performs activities that are somewhat charitable and educational in nature. However, Respondent is not stipulating that this program meets the test of the charitable and educational exemption set forth in MCL 211.7o and MCL 211.7n, respectively.

54. The following paragraph describes the activities of the Leadership Kalamazoo program:

Established in 1986, this outstanding community leadership development program has nurtured hundreds of individuals, giving them tools to be effective leaders. The program's goal is to provide the southwest Michigan area with an on-going source of motivated leaders from diverse backgrounds, educated about the community and its issues. More than 400 of the program's graduates are currently serving on boards, commissions, as elected officials and as volunteers at hundreds of local organizations. The program recently developed an alliance of like-programs throughout the region.

55. The Leadership Kalamazoo program is a non-profit entity. Petitioner contends that this program is charitable and educational in nature. Respondent stipulates that this program performs activities that are somewhat charitable and educational in nature. However, Respondent is not stipulating that this program meets the test of the charitable and educational exemption set forth in MCL 211.7o and MCL 211.7n, respectively.

56. The following paragraph describes the activities of the Jeter's Leaders program:

As a part of Derek Jeter's Turn 2 Foundation, Jeter's Leaders is a youth leadership program targeting high school students, based on academic achievement and commitment to a healthy life style. Components of the program include opportunities to learn more about themselves and the community, as well as community service activities. Leaders are encouraged to model positive behaviors in their school settings.

57. The Jeter's Leaders program is a non-profit entity. Petitioner contends that this program is charitable and educational in nature. Respondent stipulates that this program performs activities that are somewhat charitable and educational in nature. However, Respondent is not stipulating that this program meets the test of the charitable and educational exemption set forth in MCL 211.7o and MCL 211.7n, respectively.

58. [Petitioner's] Articles of Incorporation state, in relevant part:

The purposes for which the Corporation is organized are as follows:

- (A) To solicit, receive and administer funds for charitable, benevolent and educational purposes.
- (B) To operate exclusively for the benefit of, to perform the functions of and to carry out the charitable and educational purposes of the Kalamazoo County Chamber of Commerce

59. [Petitioner] and [Respondent] agree that this stipulated statement of facts may be supplemented by discovery responses of the parties and by affidavits submitted by the parties to the Tribunal to cover topics that the parties cannot stipulate to, and the Tribunal may consider this material as if admitted into evidence. The parties also stipulate and agree that the Tribunal may view and consider the Kalamazoo Regional Chamber of Commerce web site and relevant links to the web site of the Programs contained therein.

STIPULATED EXHIBITS

The parties submitted the following exhibits:

1. Kalamazoo Regional Chamber of Commerce Account Profile Report, Business Education Connection, FY2006.
2. Kalamazoo Regional Chamber of Commerce Account Profile Report, Building Occupancy, FY2005.
3. Kalamazoo Regional Chamber of Commerce Account Profile Report, Contracted Labor/Interns, FY2006.
4. Kalamazoo Regional Chamber of Commerce Account Profile Report, Building Occupancy Costs In-Kind, FY2006.
5. Kalamazoo Regional Chamber of Commerce Account Profile Report, Salaries, FY2006.
6. Kalamazoo Regional Chamber of Commerce Account Profile Report, Contributions from KRCCR, FY2007.
7. Kalamazoo Regional Chamber of Commerce Account Profile Report, Salaries, FY2007.
8. Kalamazoo Regional Chamber of Commerce Account Profile Report, Building Occupancy (In Kind), FY2006.
9. Kalamazoo Regional Chamber of Commerce Account Profile Report, Leadership Allocation, FY2006.
10. Kalamazoo Regional Chamber of Commerce Account Profile Report, Equipment/Facilities, FY2006.
11. Kalamazoo Regional Chamber of Commerce Account Profile Report, Salaries, FY2006.
12. Summary of dedicated employees and percentage of building space.

13. List of Kalamazoo Regional Chamber Foundation Programs.
14. Chart listing Programs and related building occupancy.

CONCLUSIONS OF LAW

There is no specific tribunal rule governing a judgment made on stipulated facts. As such, the Tribunal is bound to follow the Michigan Rules of Court. TTR 111(4). Pursuant to MCR 2.116:

(A) Judgment on Stipulated Facts.

- (1) The parties to a civil action may submit an agreed-upon stipulation of facts to the court.
- (2) If the parties have stipulated to facts sufficient to enable the court to render judgment in the action, the court shall do so.

For the reasons discussed herein, the Tribunal finds that the parties have stipulated to facts sufficient to enable the Tribunal to render judgment.

At issue in this case is Petitioner's claim of a property tax exemption under MCL 211.7n, MCL 211.7o and MCL 211.9. To that end, the general property tax act provides that "all property, real and personal, within the jurisdiction of this state, **not expressly exempted**, shall be subject to taxation." MCL 211.1. (Emphasis added.)

The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:

[I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and **an alleged grant of exemption will be strictly construed** and cannot be made out by

inference or implication but **must be beyond reasonable doubt**. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. *Michigan Bell Telephone Company v Department of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, Taxation (4th ed), §672, p 1403.

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax. (*Id.*, p207)

It is also well settled that a petitioner seeking a tax exemption bears the burden of proving that it is entitled to the exemption. The Michigan Court of Appeals, in *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002), discussed Justice Cooley's treatise on taxation and held that:

[T]he **beyond a reasonable doubt** standard applies only when a petitioner. . . attempts to establish a class of exemptions; the **preponderance of the evidence** standard applies to a petitioner's attempts to establish membership in an already exempt class. (Emphasis added.) (*Id.*, pp494-495)

In the instant case, Petitioner asserts that the subject property is exempt from property taxes because Petitioner is a charitable institution under MCL 211.7o and MCL 211.9 and an educational institution under MCL 211.7n. Charitable and educational institutions have been recognized as exempt classes. Because Petitioner is attempting to establish membership in these classes, the preponderance of evidence standard applies.

Exemption for Charitable and Educational Institutions – MCL 211.7o and MCL 211.7n

The exemption for real and personal property owned and occupied by a nonprofit charitable institution (the “charitable exemption”) is found in MCL 211.7o, which states in pertinent part:

Real or personal property owned and occupied by a nonprofit charitable institution *while occupied by that nonprofit charitable institution* solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act. (Emphasis added.)

Similarly, the exemption for real property owned and occupied by a nonprofit educational institution is found in MCL 211.7n which states, in pertinent part:

Real estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific 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. (Emphasis added.)

In this case, Respondent asserts that Petitioner does not occupy the subject property as required under MCL 211.7o or MCL 211.7n. On the other hand, Petitioner asserts that it does occupy the subject property and relies on the Court of Appeals decision in *Pheasant Ring v Waterford Township*, 272 Mich App 436; 726 NW2d 741 (2006), in support of this position. In *Pheasant Ring*, the court held: “The proper test is whether the entire property was used in a manner consistent with the purpose of the owning institution.” (*Id.*, p442) Petitioner argues that, “[i]n *Pheasant Ring* the owning institution rented its property to a third party in furtherance of its mission. Pheasant Ring had zero physical presence at the property it owned but was still deemed to ‘occupy’ it.” (Petitioner’s Reply Brief, 9) In this case, Petitioner states that it provides office space rent-free to several of the Programs, it pays the compensation for the employees of several of the Programs, it provides rent at a reduced rate to Jeter’s Leaders, with the unpaid portion of the rent being considered an in-kind credit, and it provides office space to other Programs in the

form of an in-kind credit. For these reasons, Petitioner argues that it occupies 29% of the subject property.

Subsequently, the Court of Appeals' decision in *Pheasant Ring* was overruled by the Michigan Supreme Court in *Liberty Hill Housing Corporation v City of Livonia*, 480 Mich 44; 746 NW2d 282 (2008). In that case, the petitioner "did not maintain a regular physical presence on the property, but instead leased the housing on the property for tenants to use for their own personal purposes." (*Id.*, p46) After a thorough review of cases involving the question of occupancy, and a review of the various definitions of occupy, the Court reasoned that:

. . .the Legislature must have intended the term "occupy" to mean the other aspect of the dictionary definition: to "reside in or on" or "to be a resident or tenant of; dwell in". . .Thus aided by this dictionary definition, we conclude that to occupy property under MCL 211.7o(1), the charitable institution must at a minimum have a regular physical presence on the property. (*Id.*, pp58-59)

The Court further explained in footnote 15 that:

A charitable institution does not automatically occupy property if it has occupancy rights to the property. The term "occupy" requires more than merely having the "right to occupy." As we have explained, the charitable institution must actually occupy the property, i.e., maintain a regular physical presence there. (*Id.*, p59)

In addressing the Court of Appeals' decision in *Liberty Hills*, the Court held that the court's decision was correct, specifically "that petitioner did not occupy property that it leased to others and did not physically reside in." (*Id.*, p59) Instead, the tenants occupied the property.

We agree with the Court of Appeals' finding that:

. . .to find that the non-profit [sic] corporate owner/lessor *occupies* the properties by virtue of leasing them to tenant-occupants, even though the tenancy is consistent with the non-profit's [sic] corporate purposes, requires a "significant stretch." (*Liberty Hill, supra* at 2 (emphasis in original.) (*Id.*, p59)

In contrast:

The *Pheasant Ring* panel's holding that a nonprofit corporation occupies a property merely by virtue of the fact that the property is being used in a manner consistent with the corporation's purpose is at odds with the statute's plain language. (*Id.*, p59)

Given this, the Tribunal cannot find that Petitioner occupies the subject property merely by providing office space for the Programs either free or at a reduced rate, or for an in-kind contribution, or by providing funding for the Program's employees. The Programs are organizations apart and separate from Petitioner. It cannot be said that Petitioner and the Programs are one in the same. Importantly, Petitioner stipulated to the following fact: "The Foundation (Petitioner) has no employees, and does not have a separate office in the subject property apart from the office space that houses the Programs." (Stipulation of Facts, #14) For these reasons, the Tribunal finds that Petitioner does not occupy the subject property and, as such, does not meet the requirements for a property tax exemption under MCL 211.7o or MCL 211.7n.

Even if Petitioner were ultimately held to occupy the subject property due to the presence of the Programs, the Tribunal disagrees with Petitioner's 29% occupancy rate. According to Petitioner's Exhibit #12, the office space provided to the Programs occupies 2,703 square feet of the total 12,789 square feet of office space, or 21%. The Chamber of Commerce leases 1,848 square feet, while the other lessees occupy the other 8,238 square feet of office space. The remainder of the office building is comprised of 5,905 square feet of storage and 11,306 square feet of common space. When allocating the storage area and common space amongst all of the occupants, Petitioner determined that the Programs occupied 29% of the entire building. Petitioner did not explain how it arrived at this number and the Tribunal does not find it credible that storage and common space should be allocated disproportionately to the Programs.

Finally, the Tribunal recognizes that in *Wexford, supra*, the Michigan Supreme Court granted the petitioner a property tax exemption for a portion of the real property at issue while at the same time denying the exemption for the remaining property. Specifically, in footnote 3 the Court states: “Thirteen percent of petitioner’s property is leased to a for-profit entity and is, thus, not tax-exempt; petitioner’s arguments pertain only to the remaining 87 percent.” (*Id.*, p198)

However, in that case the Court was asked to:

. . .determine in which instances an organization claiming to perform charity work or work benefiting the public health does so to an extent that would merit the respective tax exemptions, and, importantly, whether there are any concrete parameters that can be imposed to assist with these inquiries. (*Id.*, p202)

Thus, the *Wexford* Court was not asked to address the issue of whether a partial property tax exemption under MCL 211.7o was appropriate.

Unlike other property tax exemptions found in the GPTA, neither MCL 211.7o nor MCL 211.7n specifically permit a partial tax exemption. For example, MCL 211.7dd permits a partial property tax exemption for those claiming a principal residence exemption. In pertinent part, MCL 211.7dd states:

- (c) Except as otherwise provided in this subdivision, principal residence includes only that portion of a dwelling or unit in a multiple-unit dwelling that is subject to ad valorem taxes and that is owned and occupied by an owner of the dwelling or unit. . .Except as otherwise provided in this subdivision, principal residence also includes any portion of a dwelling or unit of an owner that is rented or leased to another person as a residence as long as that portion of the dwelling or unit that is rented or leased is less than 50% of the total square footage of living space in that dwelling or unit.

Clearly, the language of MCL 211.7dd(c) provides two possible scenarios in which a person may claim a principal residence exemption for only part of his or her home.

Similarly, a partial property tax exemption is permitted for those claiming an exemption for qualified agricultural property. MCL 211.7dd(d) provides, in pertinent part: “An owner shall

not receive an exemption for that portion of the total state equalized valuation of the property that is used for a commercial or industrial purpose or that is a residence that is not a related building.” In other words, an owner will receive an exemption for all of the property except that portion used for commercial or industrial purposes or an unrelated building used as a residence. A review of MCL 211.7o and MCL 211.7n reveals no language permitting a partial tax exemption.

In *Huggett v Dept of Natural Resources*, 464 Mich 711; 629 NW2d 915 (2001), the Michigan Supreme Court held:

When construing statutes, our primary task is to discern and give effect to the Legislature’s intent. We begin by examining the statutory language, which provides the most reliable evidence of that intent. If the statutory language is clear and unambiguous, then we conclude that the Legislature intended the meaning it clearly and unambiguously expressed, and the statute is enforced as written. No further judicial construction is necessary or permitted. (*Id.*, p717)

Given the language of MCL 211.7o and MCL 211.7n, the Tribunal finds that the language is clear and unambiguous and that the Legislature did not intend to provide for partial property tax exemptions for charitable and educational institutions. Therefore, in the event that Petitioner is found to be exempt under either MCL 211.7o or MCL 211.7n, the Tribunal finds that the subject property would be 100% exempt and not 29% as Petitioner claims or 21% as adjusted by the Tribunal.

Exemption for Personal Property Owned by a Charitable or Educational Institution – MCL 211.9

The exemption for personal property owned by a charitable institution is found in MCL 211.9, which provides, in pertinent part:

- (1) The following personal property. . .is exempt from taxation:
 - (a) The personal property of charitable, educational, and scientific institutions incorporated under the laws of this state.

A review of MCL 211.9(1)(a) indicates that it does not limit the exemption to personal property *used* by a charitable or educational institution; it is sufficient that the institution *own* the property. Thus, contrary to Petitioner's claim, if Petitioner is found to be a charitable or educational institution, 100%, not 29% as claimed by Petitioner or 21% as adjusted by the Tribunal, of its personal property is exempt from property taxes under MCL 211.9(1)(a). The language of MCL 211.9(1)(a) differs from that of several other personal property tax exemptions established in MCL 211.9 that require use by the institution claiming the exemption. For example, MCL 211.9(1)(m) provides, in pertinent part:

Personal property owned by a bank or trust company organized under the laws of this state, a national banking association, or an incorporated bank holding company as defined in section 1841 of the bank holding company act of 1956, 12 USC 1841, that controls a bank, national banking association, trust company, or industrial bank subsidiary located in this state. . . Personal property owned by a state or national bank, trust company, or incorporated bank holding company that is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit is not exempt under this section.

Thus, personal property owned by these entities and used by these entities is exempt from tax, while this same property, if leased, loaned or otherwise made available to another entity, is not exempt from tax. With this, the question of whether Petitioner is a charitable or educational institution must be addressed in order to determine whether Petitioner's personal property is exempt from property tax.

In *Wexford, supra*, a decision cited by both parties, the Court thoroughly reviewed previous court decisions involving a claim of a charitable exemption. In doing so, the Court reiterated the following "foundational principle" originally set forth in *Attorney General v Common Council of Detroit*, 113 Mich 388; 71 NW 632 (1897):

It is not enough, in order to exempt such associations from taxation, that one of the direct or indirect purposes or results is benevolence, charity, education, or the

promotion of science. *They must be organized chiefly, if not solely, for one or more of these objects.* (Emphasis added.) (*Wexford*, p205)

The Court then held that it is an “indispensable principle” that:

. . .the organization must offer its charitable deeds to benefit people who need the type of charity being offered. In a general sense, there can be no restrictions on those who are afforded the benefit of the institution’s charitable deeds. This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought. Rather, a charitable institution can exist to serve a particular group or type of person, but the charitable institution cannot discriminate within that group. The charitable institution’s reach and preclusions must be gauged in terms of the type and scope of the charity it offers. (*Id.*, p213)

The Court concluded that the following six-part test must be considered when determining whether an institution is “charitable institution” under MCL 211.7o:

- (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. (*Id.*, p215)

In applying the first test to the case at hand, there is no dispute that Petitioner is a nonprofit institution. The second test, that being whether Petitioner is organized chiefly, if not

solely, for charity, is not so easy to ascertain. In *Gull Lake Bible Conference Association v Township of Ross*, 351 Mich 269; 88 NW2d 264 (1958), the Court stated: “[I]n determining the true purpose of the plaintiff for owning and maintaining the property we must not overlook, but rather be largely governed by the purposes in its Articles for its incorporation.” (*Id.*, p275) As previously mentioned, Petitioner’s Articles of Incorporation provide, in pertinent part:

The purposes for which the Corporation is organized are as follows:

- (C) To solicit, receive and administer funds for charitable, benevolent and educational purposes.
- (D) To operate exclusively for the benefit of, to perform the functions of and to carry out the charitable and educational purposes of the Kalamazoo County Chamber of Commerce. . . .

Another source of information to turn to in determining Petitioner’s reason for being is Petitioner’s website. The website contains the following statement: “[Petitioner] was founded to provide financial support, or serve as the fiscal agent for, community-based programs that fit well within the Kalamazoo Regional Chamber of Commerce’s mission and strengthen the community as a whole.” Another informational resource is a brochure submitted by Petitioner titled “Second Century Campaign.” According to this brochure, Petitioner’s “primary mission is to provide funding and support for community programming. [Petitioner] owns the Chamber building and makes building resources available to regional organizations.” (Petitioner’s Exhibit

D) Additionally, the Brochure states:

[Petitioner] serves three key purposes:

- To provide funding for responsive, forward-thinking community programs;
- To attract charitable contributions from individuals, businesses and foundations; and

- To own the Chamber building, including making the building and its resources available to local organizations. (Petitioner's Exhibit D)

From these various sources of information, it is clear that Petitioner was organized primarily to solicit, receive and administer funds. In this sense, Petitioner was organized for the same purpose as other foundations. However, unlike a community foundation, for example, which provides funding for a wide variety of charitable purposes and for which donors receive a Michigan Income Tax credit under MCL 206.261, Petitioner's funds are restricted and are not used for a broad range of charitable activities. Instead, the funds are used only for those purposes that the Kalamazoo Chamber of Commerce deem charitable or educational.

In *Wexford*, the Court reaffirmed the definition of charity set forth in *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340; 330 NW2d 682 (1982). Specifically:

[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. (*Wexford*, p214)

In various ways, Petitioner has asserted that it is charitable because it provides the gift of education to an indefinite number of persons, it assists people to establish themselves for life, and it lessens the burdens of government. These gifts are made through Petitioner's support of the Programs, both through funding and office space. While the Tribunal finds these activities laudable, the Tribunal cannot conclude "that the Legislature intended to grant tax-exempt status on the basis of these activities." (*MUCC*, p670)

Petitioner asserts that the Programs bring people's minds under the influence of education by providing those in business with counseling, instructions and even training as to how to become more successful. Various Programs also work with students and teachers, performing such activities as providing opportunities for the students "to learn about the expectations of today's employers" and assisting teachers in lesson planning. (Stipulated Fact #42) Additionally, by claiming an exemption for its personal property under MCL 211.9, Petitioner claims that it is an educational institution.

However, Petitioner has not shown that the services offered by the Programs fit into the general scheme of education provided by the state and supported by public taxation so that a substantial contribution is made to relieve the government's educational burden. (*Kalamazoo Aviation History Museum, supra*, pp713-714) Nor has Petitioner shown, as discussed in *MUCC, supra*, that these activities are constitutionally or statutorily mandated. Finally, it cannot be said that if the services were not provided by the Programs that the burden on this state would be proportionately increased.

While the services provided through the Programs may be laudable, "[s]omething more than serving the public interest is required to bring one claiming an exemption as an educational institution within the goals and policies affording a tax exemption." (*Ladies Literary, supra*, p755) For these reasons, the Tribunal further finds that Petitioner has not proven by a preponderance of the evidence that it is an educational institution. Because Petitioner has not met its burden of proof, its claim of exemption as an educational institution under MCL 211.9 must be denied.

Similarly, the Tribunal fails to see how the activities provided by the Programs assist people to establish themselves for life. Petitioner's explanation as to how this would occur is

minimal, asserting that the Programs, by their very nature, help establish people for life. For example, Petitioner asserts that by helping charity seekers find charity services and by helping those in the business community to succeed in the current economy, it helps people establish themselves for life. The Tribunal disagrees. While helping a person to find charitable services may help that person in the short run, it only helps someone to establish themselves for life if the goal is to have that person exist on charitable services for the rest of his or her life. Also, the Tribunal is not convinced that providing classes or similar services to those in the business community helps establish those people for life.

At the same time, Petitioner makes the same vague assertions that the Programs lessen the burdens of government. However, Petitioner has pointed to no specific governmental burden that is lessened through the Programs.

[A] mere statement without authority is insufficient to bring an issue before this Court. It is not sufficient for a party “simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” Accordingly, we need not address this issue, and therefore, decline to do so. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

As in *Wilson*, the Tribunal declines to discover and rationalize the basis for this claim.

For these reasons, the Tribunal finds that while Petitioner’s support of the Programs may assist the Programs in performing “some charitable endeavors, its activities, viewed as a whole, do not benefit an indefinite number of persons or the general public without restriction.” (*MUCC*, p673) As such, the Tribunal finds that Petitioner was not organized chiefly, if not solely, for charity as defined in *Wexford*. Therefore, Petitioner does not meet the second *Wexford* test. For these same reasons, the Tribunal further finds that Petitioner does not meet the

fourth *Wexford* test. Given this, the Tribunal finds that Petitioner did not prove by a preponderance of the evidence that it is a charitable institution. Because Petitioner has not met its burden of proof, its claim of exemption as a charitable institution under MCL 211.9 must be denied.

JUDGMENT

IT IS ORDERED that Judgment is rendered in favor of Respondent pursuant to MCR 2.116(A).

IT IS FURTHER ORDERED that Petitioner's request for a charitable exemption pursuant to MCL 211.7o and MCL 211.9 is DENIED.

IT IS FURTHER ORDERED that Petitioner's request for an educational exemption pursuant to MCL 211.7n is DENIED.

IT IS FURTHER ORDERED that the subject property's assessed and taxable values for the 2004, 2005 and 2006 tax years are those indicated in the Final Values section of this Opinion and Judgment.

IT IS FURTHER ORDERED that this case is DISMISSED.

These Orders resolve all pending claims in this matter and close this case.

MICHIGAN TAX TRIBUNAL

Entered: June 6, 2011

By: Patricia L. Halm