

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

Boyne Area Gymnastics, Inc.,
Petitioner,

v

MTT Docket No. 320068

City of Boyne City,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER
MCL 2.116(C)(10)

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

ORDER OF DISMISSAL

On April 22, 2008, the Tribunal entered Administrative Law Judge (ALJ) John S. Gilbreath, Jr.'s Proposed Order granting Petitioner's motion for summary disposition under MCR 2.116(C)(10). In this Proposed Order, ALJ Gilbreath determined that Petitioner is a charitable institution pursuant to MCL 211.7o and MCL 211.9 and granted property owned and occupied by Petitioner a property tax exemption. Having given due consideration to the Proposed Order and the file, the Tribunal finds that the Proposed Order does not comport with the reasoning of previous charitable exemption cases decided by Michigan courts. Given this, the Tribunal reverses the Proposed Order and finds that Petitioner is not a charitable institution and that Petitioner's property is not entitled to a property tax exemption pursuant to MCL 211.7o or MCL 211.9. Petitioner's Motion for Summary Disposition is denied and Respondent is granted summary disposition pursuant to MCR 2.116(I)(2).

PROPOSED ORDER AND EXCEPTIONS

The Proposed Order states, in pertinent part:

The parties have 20 days from date of entry of this Proposed Order and Judgment to notify the Tribunal in writing if they do not agree with the Proposed Order and why they do not agree (i.e., exceptions). After the expiration of the 20-day period, the Tribunal will review the Proposed Order and consider the exceptions, if any, and:

- a. Adopt the Proposed Order as a Final Decision.
- b. Modify the Proposed Order and adopt it as a Final Decision.
- c. Order a rehearing or take such other action as is necessary and appropriate.

On May 7, 2008, Respondent filed exceptions to the Proposed Order, stating:

- A. “Boyne City objects to entry of the Proposed Order in that the case of *Involved Citizens Enterprises Inc v Twp of East Bay* is currently pending in the Court of Appeals. COA Case Number 284706. MI Tax Tribunal Docket Number 00-305-734. The facts and applicable law in that case have direct bearing on the outcome of this matter.”
- B. “Boyne City objects to entry of the Proposed Order as Petitioner Boyne Area Gymnastics is not a ‘charitable institution’ as evidenced by the following:
 1. Petitioner’s charitable endeavors, if any, must be viewed as a whole and do not benefit an indefinite number of persons or the general public without restrictions. Therefore, it is not a charitable organization entitled to exemption from taxation. *North Ottawa Rod & Gun Club Inc v Grand Haven Charter Township*, No. 268308 Tax Tribunal LC N) 00-298030 and *Wexford*.
 2. Petitioner’s approach to giving ‘scholarships’ is very haphazard. Petitioner does not have a written policy regarding such scholarships, or committing to giving them. Petitioner is not required under its By-Laws to provide the scholarships. Petitioner Boyne Area Gymnastics has no written verification standards for qualifying for the scholarships. Petitioner while stating the criteria for such scholarships does not do anything to ensure, or even determine if the applicants for scholarships meet the criteria. Petitioner could stop giving such scholarships tomorrow and nothing would preclude them from doing that. To determine that they meet the criteria as a charitable organization based on the way they award scholarships, which is Petitioner’s only charitable activity, would be travesty. Boyne City would be placed in a position of having to do discovery every year to determine if they are actually engaging in ‘charitable’ activities that year, or whether they fail to qualify.”

Petitioner did not file any exceptions to the Proposed Order.

CONCLUSIONS OF LAW

In 2006, the Michigan Supreme Court issued its decision in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006). In that case, the Court was called on to interpret several provisions of the General Property Tax Act, being MCL 211.1 *et seq*, dealing with property tax exemptions. The Court stated:

In examining this issue, we bear in mind the time-honored rules of statutory construction, under which our paramount concern is identifying and effecting the Legislature's intent. And where a tax exemption is sought, we recall that because tax exemptions upset the desirable balance achieved by equal taxation, **they must be narrowly construed.** (Emphasis added.) (Citations omitted.) *Id.*, p204.

In *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002), the Michigan Court of Appeals was asked to clarify the well-settled principle that a petitioner seeking a tax exemption bears the burden of proving that it is entitled to the exemption by determining the applicable standard. The court held that:

...the **beyond a reasonable doubt** standard applies only when a petitioner before the Tax Tribunal attempts to establish that a class of exemptions; the **preponderance of the evidence** standard applies to a petitioner's attempt to establish membership in an already exempt class. (Emphasis added.) *Id.* at 494, 495.

In the instant case, Petitioner asserts that the subject property is exempt from property taxes because Petitioner is a charitable institution. Charitable institutions have been recognized as an exempt class; therefore, the preponderance of evidence standard applies in this case.

There are two property tax exemptions that apply to charitable institutions. MCL 211.7o provides, 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.

The other statutory exemption applies only to personal property and is found in MCL 211.9(1)(a). This statute provides, in pertinent part: “The personal property of charitable, educational, and scientific institutions incorporated under the laws of this state” is exempt from taxation.

As discussed in the Proposed Order, *Wexford, supra*, is the most recent decision issued by the Michigan Supreme Court dealing with charitable property tax exemptions. In that case, the issue presented to the Court was to “decide precisely how, in the absence of a statutory yardstick, we should measure whether an institution is a ‘charitable institution’ when it performs some level of charitable work.” *Id.*, p202. In arriving at a decision, the Court first examined the definition of “charitable institution.” The Court reiterated the following foundational principle:

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. *Id.*, p205.

The Court also reiterated 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), stating that this is “what a claimant must show to be granted a tax exemption as a charitable institution:

[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. *Id.*, p214.

After a thorough review of previous decisions dealing with charitable exemptions, the *Wexford* Court concluded that the following factors must be considered when determining whether an institution is “charitable institution” under MCL 211.7o and MCL 211.9:

- (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 these factors to the case at hand, there is no dispute that Petitioner is a nonprofit institution and, as such, satisfies the first factor. However, in *American Concrete Inst v State Tax Comm*, 12 Mich App 595, 605-606; 163 NW2d 508 (1968), the Court of Appeals addressed this requirement, stating that a petitioner’s:

. . .income tax status does not affect or predetermine the taxable status of its property under the Michigan general property tax law. . .exemption from Michigan ad valorem tax is not determinable by its qualification as an organization exempt from income tax under section 501(c)(3) of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act, supra, sections 7 and 9. A reading of the language of these two provisions (Federal and State) clearly demonstrates the difference. . . .
Id. at 605-606.

Thus, while Petitioner is a nonprofit institution, this alone does not determine Petitioner’s exempt status. Instead, the other *Wexford* factors must be considered.

The second factor, that an institution must be organized chiefly, if not solely, for charitable purposes, can be determined by several documents that discuss why an institution is organized. One of these documents is the institution's Articles of Incorporation. In this case, Petitioner's original Articles state that its purpose is "[t]o organize gymnastics in the Boyne City Area and any other purpose allowed by law in the State of Michigan." (Petitioner's Motion for Summary Disposition, Exhibit A) Petitioner's Amended Articles of Incorporation state that Petitioner was organized:

- (1) To cultivate and nurture the physical, mental, and emotional development of children and young adults. To educate, promote, and advance the interest of physical fitness throughout one's life, and to provide the opportunity for self-expression and recreation through gymnastics and dance.
- (2) Said organization is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code. (Petitioner's Motion for Summary Disposition, Exhibit B)

Another document that is telling in this regard is an institution's By-laws, or Constitution.

Petitioner's Constitution states that its purpose is:

To nurture the physical, mental, and emotional development of children and young adults, to educate them on the importance of physical fitness throughout one's life, and provide the opportunity for self-expression through gymnastics and dance. In addition, it is the organization's goal to provide dance and fitness activities for adults, including senior citizens. (Petitioner's Motion for Summary Disposition, Exhibit D)

Finally, while not submitted, the Tribunal takes judicial notice of Petitioner's 2004 Annual Report, which states that Petitioner's purpose "is to provide fitness activities for children; including, gymnastics, dance, yoga, aerobics and martial arts." Similarly, Petitioner's 2008 Annual Report, of which the Tribunal also takes judicial notice, states that Petitioner's purpose is "to teach gymnastics, dance and fitness."

The Tribunal finds that while Petitioner's Amended Articles contain the standard nonprofit language, none of these documents indicate that Petitioner is organized for a charitable purpose or that "it devotes itself to charitable works on the whole." *Wexford*, p216. In fact, all documents indicate that Petitioner was organized primarily for the purpose of promoting gymnastics, dance and physical fitness. While these may be laudable goals, they do not indicate a charitable purpose. For these reasons, the Tribunal finds that Petitioner was not organized chiefly, and certainly not solely, for charity.

In *Wexford*, the Court, finding that the petitioner was a charitable institution, stated that "Respondent has pointed to no other reason for petitioner's existence." In this case, the reason came from Petitioner. "Boyne Gymnastics is the real life dream of its director, Kari Streelman. As a youngster, gymnastics and competitive gymnastics were a large part of her life. She so enjoyed gymnastics that as an adult she set out to share her love of the sport with others." (Petitioner's Motion, pp3-4) While the fact that Ms. Streelman has accomplished her dream is admirable, it does not raise Petitioner to the status of an institution organized chiefly, if not solely, for charity.

Even if it is assumed that Petitioner does offer "charity" as it was defined in *Wexford*, Petitioner does not meet the third factor, namely that it offers the charity indiscriminately. Petitioner, through an unwritten policy, offers financial assistance, or "scholarships," to children if they qualify for the public school lunch program. This policy fails to take into consideration other children who may not qualify for the public school lunch program, but whose families are unable to pay the \$72.00 per hour fee. Additionally, Petitioner does not offer assistance to adults, even though classes are available to them.

In the Proposed Order, the ALJ found that Petitioner met the fourth *Wexford* factor, namely that 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 burden of government. (*Wexford*, p215)

The ALJ stated that because Petitioner promotes physical fitness and mental discipline, "there is no question that the activities provided 'relieve people's bodies from disease, suffering or constraint'." (Proposed Opinion, p24) The Tribunal disagrees. There is nothing in the file that indicates that Petitioner "relieves" anything, as would a hospital, nursing home, etc. In Petitioner's own words, its purpose is "to teach gymnastics, dance and fitness." Given this, the Tribunal finds that Petitioner does not meet the fourth *Wexford* factor.

While sparse, the financial documents provided by Petitioner appear to indicate that it meets the fifth *Wexford* factor.

As to the sixth and final *Wexford* factor, the Tribunal finds that Petitioner's overall nature is not charitable. Instead, Petitioner's "nature" is that of a recreational organization, just like any of the other many dance and gymnastic organizations. For the reasons set forth herein, the Tribunal finds that Petitioner has not met its burden of proof in establishing that it is a charitable institution. The Tribunal reverses the judgment arrived at by the ALJ in the Proposed Order and finds that the subject property is not exempt from *ad valorem* property taxes pursuant to MCL 211.7o or MCL 211.9.

This decision is supported by the first case presented to the Michigan Court of Appeals after the *Wexford* decision, *North Ottawa Rod & Gun Club, Inc v Township of Grand Haven*, unpublished opinion per curiam of the Court of Appeals, decided August 21, 2007, (Docket No. 68308). The facts in that case are very similar to the case at hand. In *North Ottawa*, the

petitioner owned and occupied a rod and gun club that was made available to the public for a fee. The court held that while the petitioner's recreational facilities "are open to the public, they cannot be considered gifts to the general public without restriction. The subject property is only available to the general public for a fee." *Id.* In this case, the subject property is open to the general public; however, only that portion of the general public that meets Petitioner's unwritten income standards is admitted without paying a fee, or a partial fee. "In sum, while petitioner engages in some charitable endeavors, its activities, viewed as a whole, do not benefit an indefinite number of persons or the general public without restriction." *Id.*

The next case that dealt with a charitable exemption claim was *Involved Citizens Enterprises, Inc v Township of East Bay*, unpublished opinion per curiam of the Court of Appeals, decided October 29, 2009, (Docket No. 284706), a case remarkably similar to the case at hand. In *Involved Citizens*, the petitioner owned and operated an ice rink. Like Petitioner, the petitioner in *Involved Citizens* allowed several organizations, including schools and churches, to use its facilities for free. While there was no evidence that the petitioner waived its fees for any of the hockey players that utilized its facilities, the court stated that it is not "necessarily the case that even if petitioner had directly granted the waiver of fees to hockey players, it would qualify for an exemption under *Wexford Medical*, as such waivers do not meet the definition of charity as described in that case." *Id.*

Similar to the way the property in *Involved Citizens* was operated, the operation of Petitioner's facilities does not meet the definition of charity as described in *Wexford*. Petitioner admits that its purpose is not to educate. Moreover, Petitioner has not asserted that it provides any of the various types of charitable activities referenced in *Wexford*. Even if it were to do so, the Tribunal finds that it would be futile as Petitioner, like the petitioner in *Involved Citizens*, is

in the business of providing a recreational opportunity. Clearly, this opportunity “is not one of the benefits of charity contemplated by the Court in *Wexford Medical*.” *Id.*

Finally, in the parties’ Stipulation of Uncontroverted Facts, the parties state that “Petitioner . . . was formed to provide **low-cost facilities** for gymnastics, dance, and fitness for youth. . . .” (Emphasis added.) (Stipulation of Uncontroverted Facts, #2) The ALJ incorporated this stipulation into the Findings of Fact section of his Proposed Order. (Proposed Order, p11) While the parties may have agreed that Petitioner was formed to provide low-cost facilities, there is nothing in the file to support this statement. Petitioner’s Articles of Incorporation, Amended Articles of Incorporation, and Constitution are all void of any reference to “low-cost” facilities. Moreover, the file contains no information as to the costs charged for comparable services by other facilities. Even if the parties’ stipulation were to be accepted as true, no data has been provided to indicate that Petitioner’s purpose for forming was ever accomplished. Thus, it appears that the ALJ merely accepted this stipulated fact without question. Because there is no basis for this Finding of Fact, the Tribunal finds that it is not a fact and that it should not have been considered by the ALJ.

The Tribunal, pursuant to Section 26 of the Tax Tribunal Act, being MCL 205.726; MSA 7.543, as amended by 1980 PA 437, makes this final decision based on Petitioner’s Motion for Summary Disposition, Respondent’s answer to the motion, and the remainder of the file. The Tribunal incorporates by reference the “Findings of Fact” in the Proposed Order as the findings of fact in this final Order, but for the noted exception. The Tribunal also incorporates the remainder of the Proposed Order in this final Order to the extent the Proposed Order does not conflict with the statements and decisions made herein.

The Tribunal finds that while there are no genuine issues as to any material fact, Petitioner is not entitled to judgment as a matter of law. For the reasons discussed herein, the Tribunal finds that the Proposed Order reached an incorrect conclusion of law and that Petitioner is not a charitable institution entitled to a property tax exemption under MCL 211.7o or MCL 211.9. Because this is the sole issue in this case, the Tribunal finds that Respondent is entitled to summary disposition pursuant to MCR 2.116(I)(2).

Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

IT IS FURTHER ORDERED that summary disposition is GRANTED in favor of Respondent pursuant to MCR 2.116(I)(2).

IT IS FURTHER ORDERED that this case is DISMISSED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: March 23, 2011

By: Patricia L. Halm

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

Boyne Area Gymnastics, Inc.,
Petitioner,

v

City of Boyne City,
Respondent.

MTT Docket No. 320068

Tribunal Judge Presiding
John S. Gilbreath, Jr.

PROPOSED ORDER GRANTING
PETITIONER'S MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

This case is an *ad valorem* property tax exemption appeal. Petitioner owns real and personal property located at 615 Beardsley, Boyne City, Michigan. The real and personal property is identified as parcel number 15-051-336-163-20 and parcel number 15-051-900-021-25, respectively. The tax years at issue are 2005, 2006, 2007 and 2008¹.

Petitioner, Boyne Area Gymnastics, is a domestic nonprofit Michigan corporation organized under the laws of Michigan and located in Boyne City, Michigan. Petitioner asserts that the subject property should be tax exempt because Petitioner is a charitable institution. Respondent opposes tax exempt status for Petitioner because of the nature of Petitioner's "Scholarships."

At all times, Petitioner has been represented by Attorney Robert A. Banner and Respondent has been represented by Attorney James J. Murray.

PROCEDURAL HISTORY

¹ As to the inclusion of subsequent years after the Tribunal has initially retained jurisdiction MCL 207.737(5)(a) states:

(5) A motion to amend a petition to add subsequent years is not necessary in the following circumstances:

(a) If the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from appeal at the time of the hearing on the petition.

On March 23, 2005, Petitioner appeared before the 2005 March Board of Review in Boyne City, Michigan to request property tax exempt status for its real and personal property. The Board of Review denied Petitioner's request. Subsequently, Petitioner submitted a petition first to the State Tax Commission on June 29, 2005 and then to the Tribunal's Small Claim's Division on September 23, 2005. The Tribunal's presumed jurisdiction is based on the original, albeit incorrect, appeal to the State Tax Commission. The Tribunal advised Petitioner that the amount in controversy exceeded the jurisdictional limits of the Tribunal's Small Claims Division and placed Petitioner in default. Petitioner was directed to file an Entire Tribunal Petition, and did so on January 6, 2006. Respondent filed an answer to the petition January 24, 2006.

On November 2, 2006, a telephonic Prehearing Conference was convened. A Summary of Prehearing Conference and Scheduling Order was issued on November 21, 2006. The order provided that the case would be decided on Motion(s) for Summary Disposition. Thereafter, Petitioner and Respondent filed a Stipulation of Uncontroverted Facts and Exhibits on May 22, 2007. Petitioner filed for a Motion for Summary Disposition on June 12, 2007. Respondent filed a Brief in Opposition to Petitioner's Motion for Summary Disposition on July 17, 2007.

On September 13, 2007, Respondent filed a Supplemental Brief in Opposition to Petitioner's Motion for Summary Disposition. The supplemental brief provided a copy of *North Ottawa Rod & Gun Club v Grand Haven Charter Township*, unpublished opinion per curiam of the Court of Appeals, issued August 21, 2007 (Docket No. 268308). Respondent indicated the "present case is analogous to the facts in *North Ottawa...*" and that after applying the applicable law and factors set forth in *North Ottawa...* this Tribunal must deny Petitioner's claim of exemption.

PETITIONER'S CONTENTIONS

OVERVIEW

In its Motion for Summary Disposition², Petitioner contends that for the tax years at issue, the subject real property parcel No. 15-051-336-163-20 and commercial personal property parcel No. 15-051-900-021-25 should be exempt from ad valorem property tax as a charitable/educational institution pursuant to MCL 211.7o and MCL 211.9a. More specifically, Petitioner argues that it qualifies for exemption from ad valorem property tax because it meets the requirement of the charitable institution tax exemption test established in *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 203; 713 NW2d 734,740 (2006). This test provides that:

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

Petitioner, relying upon the exhibits attached to Petitioner's Motion and Response Brief, claims that it owns and occupies the subject property "solely for the purposes for which it was incorporated" and therefore it satisfies both the first and third prongs of the test. Specifically, Petitioner's amended articles of incorporation state that the purpose of incorporation is: "to cultivate and nurture the physical, mental, and emotional development of children and young adults. To educate, promote, and advance the interest of physical fitness throughout one's life

² The following exhibits were appended to Petitioner's Motion and Response Brief:

1. *Exhibit A*: Copy of Petitioner's Articles of Incorporation.
2. *Exhibit B*: Copy of Amendment to the Articles of Incorporation in February of 1994.
3. *Exhibit C*: Tax Exemption pursuant to 501(c)(3) of the Internal Revenue Code.
4. *Exhibit D*: Petitioner's Constitution
5. *Exhibit E*: Warranty Deed and Property Transfer Affidavit
6. *Exhibit F*: Petitioner's Loan Paperwork
7. *Exhibit G*: Refinancing of the Loan
8. *Exhibit H*: Basic Information Sheet for 2006

and to provide the opportunity for self-expression through gymnastics and dance.” Petitioner offers gymnastics, yoga, step aerobics, and ballroom dancing classes to children and, therefore, it is using the property for which it was incorporated and meets the third element of the *Wexford* test.

CHARITABLE INSTITUTION REQUIREMENT

Petitioner states that it satisfies the second element in *Wexford* because it is a nonprofit charitable institution. Also, Petitioner claims that *Wexford* establishes a framework requiring that an institution’s activities as a whole must be examined and that the “inquiry pertains more to whether an institution could be considered a ‘charitable’ one rather than whether the institution offers charity or performs charitable work.” *Wexford, supra* at 212-213

Supporting these contentions, Petitioner first argues that it amended its articles of incorporation on July 12, 1994 to be a 501(c)(3) tax-exempt organization. The articles state that the organization’s charitable function is “to cultivate and nurture the physical, mental, and emotional development of children and young adults [and] [t]o educate, promote, and advance the interest of physical fitness throughout one’s life and to provide the opportunity for self-expression and recreation through gymnastics and dance.” This goal is met because Petitioner provides gymnastic, yoga, step aerobics, and ballroom dancing classes. Through these programs, students of all ages learn coordination, flexibility, and develop strength. Also, students learn to use a variety of gymnastic equipment including the balance beam, uneven bars, pommel horse, tumbling floor, and rings. Because of these new skills, Petitioner argues that students gain increased self-esteem and confidence. In this way, Petitioner contends that it meets the charitable purpose for which it was incorporated.

In addition to providing the charity of gymnastics, Petitioner also offers “Scholarships” to children who cannot afford the tuition prices for gymnastic classes. Though Petitioner is under no binding obligation to ensure that scholarships continue, Petitioner asserts that it has no intention of stopping the scholarships. Petitioner has offered scholarships throughout its entire existence as an organization. Petitioner states that this dedication shows that Petitioner has every intention of continuing this practice.

Petitioner next argues that to be a charitable institution, *Wexford* established that an organization must offer its charitable deeds to benefit people who need the type of charity being offered. This does not necessarily mean that it has to serve every person regardless of the type of charity offered but only that the charitable institution cannot discriminate within the group of people it serves. *Wexford, supra* at 215. Petitioner contends that even though it does charge tuition to participate, no child has been turned away from training at Boyne Gymnastics because they could not afford the tuition. By providing the scholarships, Petitioner claims that it is able to offer gymnastics training to any child regardless of their financial circumstances and thus they are able to meet their charitable purpose through the scholarships.

Petitioner further contends that it is open and available to anyone because there are many programs made up of the general public and open to an indefinite number of people. In *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709; 346 NW2d 862 (1984), the Michigan Court of Appeals held the Aviation Museum qualified for tax-exempt status because it provided a place for the general public to come and learn about aerial fighting in World War II. Petitioner states that, in its finding, the Court of Appeals held:

For a petitioner to qualify as a charitable institution it is sufficient that [the petitioner show] that its property is used in such a way that there is a gift for the benefit of the general public without restriction or for the benefit of an indefinite

number of persons by bringing their minds or hearts under the influence of education. *Kalamazoo Aviation, supra* at 715.

Accordingly, Petitioner claims that physical education for the general public, in the form of gymnastics training, is as worthy an endeavor as visiting a museum open to the general public. Additionally, there are numerous public demonstrations throughout the year at no cost.

Finally, Petitioner asserts that it is comparable to other organizations that the Michigan Court of Appeals has held to be charitable organizations. The Court of Appeals in *Kalamazoo Nature Center, Inc v Cooper Township*, 104 Mich App 657; 305 NW2d 283 (1981), held that a group organized to develop people's, and specifically children's, understanding and appreciation of the natural surroundings and the problems of natural resource management is a charitable organization. In *Michigan United Conservation Clubs v Lansing Township*, 129 App 1; 342 NW2d 290 (1983), the Court of Appeals held that the organization that focused on conservation and development of natural resources would have been tax exempt, but for its involvement in political lobbying.

NONPROFIT INSTITUTION REQUIREMENT

Beyond being a charitable institution, the organization must also be nonprofit. *Wexford, supra* at 203. Under Petitioner's articles of incorporation, "no part of the net earnings of the organization shall inure to the benefit of, or be distributable to its members . . . except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause. " Petitioner contends that this bylaw is followed. The Director, Kari Streelman, is paid \$33,000 a year, as compensation, and other coaches and instructors are paid at an hourly rate. Since the tuition collected does not cover the expenses to fully fund its operations, fund

raisers, such as cookie dough sales and raffles, are held annually. Donations are solicited and collected to fill the gap. These donations also allow Petitioner to provide scholarships to students who cannot afford the tuition. These monies also go to the purchase of gymnastics equipment.

RESPONDENT'S CONTENTIONS

Respondent filed its Brief in Opposition to Petitioner's Motion for Summary Disposition on July 17, 2007, and requested the Tribunal deny Petitioner's Motion for Summary Disposition because Petitioner is not a charitable institution under MCL 211.7o(1) and, therefore, not tax exempt. Respondent asserts that "where a tax exemption is sought, we recall that because tax exemptions upset the desirable balance achieved by taxation they must be narrowly construed." *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661,665; 378 NW2d 737 (1985), *Wexford, supra* at 204. Given the Court's finding in *Wexford*, Respondent argues that it is not enough that Petitioner is nonprofit but it must be charitable as well. *Wexford Medical Group v City of Cadillac*, 474 Mich 192,204, 713 NW2d 734 (2006), citing *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980).

More specifically, Respondent contends that Petitioner is not a nonprofit charitable institution when analyzing the following factors established by the Court in *Wexford, supra* at 215:

- (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.

Applying these factors, Respondent agrees that Petitioner is a nonprofit organization, but Respondent contends Petitioner is not an organization that is "organized chiefly if not solely for charity." *Id* at 215. Respondent asserts that Petitioner has by charging tuition for all of its classes, and more particularly the classes that are not dance or gymnastics related, violates its purpose of incorporation; that being to "educate, promote, and advance the interest of physical fitness through out one's life and to provide the opportunity for self expression and recreation through gymnastics and dance." (Petitioner's Exhibit B) Instead, Respondent claims that Director Kari Streelman organized the facility as an opportunity to earn a living. Furthermore, the non-dance and non-gymnastics classes are a business endeavor.

Respondent also argues that Petitioner fails to offer its charity on a non-discriminatory basis among the group it purports to serve. The discrimination Respondent asserts comes from Petitioner's offering of scholarships to only gymnastic students who qualify for the "school lunch program." This is a small segment of the population Petitioner serves and excludes adults and students in non-gymnastics programs.

Because Petitioner discriminates among the group it purports to serve, Respondent contends that Petitioner fails to meet the fourth requirement, that Petitioner does not specifically "bring people's minds or hearts under the influence of education or religion; relieve people's bodies from disease, suffering, or constraint; assist people to establish themselves for life; erect or maintains public buildings or works; or otherwise lessen the burdens of government."

Wexford, supra at 215. Respondent asserts that the classes offered by Petitioner do not attain any of the goals above.

Furthermore, Respondent distinguishes Petitioner's activities from the museum in *Kalamazoo Aviation* in that the museum is for the benefit of the general public without restriction and for the benefit of an indefinite number of persons. In contrast, Petitioner's gymnastic programs are only available to those who seek it. *Kalamazoo Aviation, supra*. In other words, Petitioner's programs are not for the general public, but are available for only a small select group.

This claim is further supported by the Michigan Tax Tribunal's finding in *Alpena Sportsmen's Club v Township of Wilson*, MTT Docket No 207020 (1995), where a nonprofit charitable tax exemption was granted to the petitioner who was involved in publishing materials free to the public and whose facilities, shooting and archery ranges, were open to public use. Also, the clubhouse rental cost covered expenses and did not disqualify them for exemption. Respondent also highlights that the cases Petitioner uses in support of its position are organizations that educated the general public about conservation and natural resources. *Kalamazoo Nature Center v Cooper Township*, 104 Mich App 657; 305 NW2d 283 (1981); *Michigan United Conservation Clubs v Lansing Township*, 129 Mich App 1; 342 NW2d290 (1983). *Alpena Sportsmen's Club, Kalamazoo Nature Center and Michigan United Conservation Clubs*. Respondent contends are distinguishable from the case at hand because Petitioner is not open to the public. The general public cannot freely walk in and use the facility; rather, use is restricted to only those individuals who pay to participate in its programs. The one exception is the Boyne High School Track team.

Respondent contends that Petitioner charges more than what it needs for successful maintenance and that the Director's salary of \$33,000 and bonus is too excessive and, therefore, Petitioner does not meet the fifth factor set out by the Court in *Wexford*.

As to the *Wexford* Court's sixth requirement, Respondent concedes that it is not an issue in this case; instead, Respondent relies on the other charitable requirements to show Petitioner should not receive the tax exemption.

Finally, Respondent claims that the recent case of *North Ottawa Rod & Gun Club v Grand Haven Charter Township*, unpublished opinion per curiam of the Court of Appeals, issued August 21, 2007 (Docket No. 268308) is analogous to the case at hand and, as such, the exemption should be denied.

FINDINGS OF FACT

Stipulation of Uncontroverted Facts

The parties made the following factual stipulations, as outlined in the Stipulation of Uncontroverted Facts filed on May 22, 2007.

Petitioner, Boyne Area Gymnastics, Inc., had real property parcel No. 15-051-336-163-20 and commercial personal property parcel No. 15-051-900-021-25 for the combined real and personal tax payment in 2006 of \$6,347.85. The building and personal property which is the subject of the Petition is occupied and used by Petitioner solely for the purposes for which it was incorporated.

Petitioner is recognized as a nonprofit federally tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code³ and was formed to provide low-cost facilities

³ The parties also stipulated to the following exhibits [or facts]:

for gymnastics, dance, and fitness for youth. Petitioner also provides classes for adults and students for additional activities such as ballroom dancing, karate, yoga, and step aerobics.

Petitioner offers classes to the general public and Petitioner does not discriminate who can participate in the different classes on the basis of age, group, race, sex, or religious affiliation. The services and classes offered by Petitioner are to promote physical fitness and mental discipline.

According to Petitioner's interpretation of the term "scholarship," Petitioner has available "scholarships" for approximately 50% of the posted costs to students who qualify for the "school lunch program." Petitioner does not have any written verification standards for qualifying for scholarships nor written standards for authorizing scholarships. Additionally, nothing in the

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1. *Exhibit 1*: Petitioner's designation as a 501(c)(3) tax-exempt organization.
 2. *Exhibit 2*: Petitioner's Constitution.
 3. *Exhibit 3*: Petitioner's Bylaws.
 4. *Exhibit 4*: Petitioner's Articles of Incorporation including any amendments thereto.
 5. *Exhibit 5*: Any and all real and personal property tax bills.
 6. *Exhibit 6*: Petitioner's stated goals and purposes as set forth in its Constitution and amended Articles of Incorporation.
 7. *Exhibit 7*: All documents reflecting loans payable to Petitioner.
 8. *Exhibit 8*: Photographs depicting interior and exterior of Petitioner's building.
 9. *Exhibit 9*: Petitioner is a domestic nonprofit corporation, organized under the laws of the State of Michigan, and that Petitioner is in good standing.
 10. *Exhibit 10*: The Tribunal has jurisdiction over this matter (see Scheduling Order).
 11. *Exhibit 11*: Number of active participants in Boyne Area Gymnastics, Inc.
 12. *Exhibit 12*: Number of participants on scholarship.
 13. *Exhibit 13*: Tuition prices charged by Petitioner.
 14. *Exhibit 14*: Documents identifying classes offered by Petitioner, including times, ages and costs.
 15. *Exhibit 15*: Deed evidencing title to subject property.
 16. *Exhibit 16*: All other documents generated in connection with Petitioner's purchase of all subject property.
 17. *Exhibit 17*: Petitioner's responses to Respondent's interrogatories and request to produce.
 18. *Exhibit 18*: Documentation of salaries and wages paid to employees.
 19. *Exhibit 19*: That the real estate that is the subject of this matter is owned and occupied by Petitioner.
 20. *Exhibit 20*: Any other exhibits that become known to the parties.

Articles of Incorporation or By-Laws of Boyne Area Gymnastics mentions scholarships or obligations to continue giving scholarships. No scholarships are offered for adult programs nor does Petitioner offer any free or reduced cost classes to adults.

At any time, there are approximately two hundred (200) students and fifty (50) adults taking various classes. The gymnastics program consists of five sessions, each consisting of one to two classes per week for nine weeks. The cost of each session is \$72 for beginner levels with increases pursuant to Petitioner's 2006 basic information sheet. If a student were to attend each session, the total cost for the year would be \$360 for one day per week for one hour. For 2006, 36 children participated in Petitioner's Scholarship program, or approximately 20 students per session. If all 20 students attended all classes in all five sessions, it equates to a charity of approximately \$3,200 (20 students x \$360 x 50% Scholarships), but some Scholarships can be more than \$36 per session per person. Pursuant to Petitioner's basic information sheet, some classes cost more than \$72 per hour and, therefore, Petitioner's "Scholarships can be higher." Past history has shown that the average yearly "charity" (charity as used by Petitioner) is actually lower than \$3,600 (to wit: \$3,096.00 for 2004-2005; \$2,700.00 for 2005-2006; and \$2,556.00 for 2006-2007) and at no time has exceeded their tax liability. In particular, in 2006, Petitioner claims \$3,232 was attributable to "Scholarships."

Petitioner admits it is not an "educational institution" and waives any claim from tax exemption under MCLA 211.7n. Instead, Petitioner's sole claim is to be exempt pursuant to Section 7o of Act 206 of 1893 [MCLA 211.7o] or more specifically under MCLA 211.7o(1) which provides:

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.

Petitioner's sole basis for claiming it is a "charitable institution" is based on the following activities:

- A. Petitioner gives "scholarships" only to children under the age of 19.
 - a. "Scholarships" are typically defined as fifty (50%) percent of the actual cost of the gymnastics services, but currently Petitioner is giving 3 full Scholarships to children who qualify.
 - b. Eligibility for a "scholarship" is defined as a child qualifying for the "school lunch program" at any area public school.
 - c. Petitioner has never confirmed eligibility requirements have been met.
 - d. Of the average 270 students per year, Petitioner granted "Scholarships" to 36 students, which according to schedules, constitutes 13.33% scholarships.
 - e. The dollar amount of "Scholarships" do not constitute money given to a gymnastic student, but rather provided for forgiveness of costs.
 - f. There is no accounting method to track Scholarships, but rather, the cost is absorbed out of Petitioner's general fund.

- B. The Boyne City High School track team uses the facilities for training one or more times per year for the past 3 years at no cost.

Petitioner fundraises (through raffles, cookie dough sales, a silent auction, and a cartwheel-a-thon) and seeks grants and donations to cover its operating expenses. Additionally, Petitioner does not engage in any lobbying of the government or any other political activity. Petitioner's key employee, Director and Officer Kari Streelman, earned approximately \$33,000 in 2006 and is eligible for bonuses.

CONCLUSIONS OF LAW

MCR 2.116(C)(10)

Standard of Review

Pursuant to MCR 2.116(C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). The motion for summary disposition must also *specifically* identify the issue that the moving party believes there is no genuine issue of material fact. MCR 2.116 (G)(4); *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994) (emphasis added). The court is liberal in finding a genuine issue of material fact. *Arbelius v Poletti*, 188 Mich App 14, 19; 469 NW2d 436 (1991) (citing *St Paul Fire & Marine Ins Co v Quintana*, 165 Mich App 719, 722; 419 NW2d 60 (1988))

The Michigan Supreme Court in *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314, 317 (1996), set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

Additionally, the affidavits and documentary evidence must be viewed in the light most favorable to the nonmoving party. *Chandler v Dowell Schlumberger Inc.*, 456 Mich 395 (Mich 1998), citing *Shallal v Catholic Social Services*, 455 Mich 604, 610; 566 NW2d 571 (1997).

In the event that it is determined that an asserted claim can be supported by evidence at trial or if the issue involves questions of credibility, intent, or state of mind, a motion under MCR 2.116(C)(10) should be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991) (citing *Peterfish v Frantz*, 168 Mich App 43, 48-49; 424 NW2d 25 (1988) and *Michigan National Bank-Oakland v Wheeling*, 165 Mich App 738, 744-745; 419 NW2d 746 (1988)). To determine if a genuine issue of material fact exists, the test is "whether the kind of record which might be developed, giving the benefit of reasonable doubt to the opposing party, would leave open an issue upon which reasonable minds might differ." [*Shallal v Catholic Soc Serv*, 455 Mich 604, 609 \(1997\)](#), citing *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994), quoting *Farm Bureau Mutual Ins C v Stark*, 437 Mich 175, 184-185; 468 NW2d 498 (1991).

Burden of Proof

The General Property Tax Act provides "[t]hat all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 348; 330 NW2d 682 (1982). The rule to be applied when construing tax exemptions was 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. *Mich Bell Tel Co v Dep't of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, *Taxation* (4th ed.), §672, p. 1403.

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax. *Id.* at 207.

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 when the petitioner attempts to establish that an entire class of exemptions was intended by Legislature. However, the **preponderance of the evidence** standard applies when a petitioner attempts to establish membership in an already exempt class. (Emphasis added.) *Id.* at 494, 495.

Charitable institutions have been recognized as an exempt class; Petitioner claims it is a member of this class. Because Petitioner is attempting to establish membership in this class, the preponderance of evidence standard applies.

Statutes

Charitable Purpose Exemption – MCL 211.7o and MCL 211.9(1)(a)

The initial issue is whether the real and personal property owned by petitioner is exempt from *ad valorem* taxation because the property is a charitable institution. The exemption for real property owned and occupied by a nonprofit charitable institution is found in MCL 211.7o, which states in relevant part: “[r]eal or personal property owned and occupied by a **nonprofit charitable institution** while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.”

(Emphasis added)

MCL 211.9 is the exemption statute which pertains to personal property. It states in pertinent part in section (1)(a) that:

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.

Case Law and Analysis

There are two Michigan Supreme court cases that address exemptions predicated on MCL 211.7o. Both are germane to determining whether the subject property is a “charitable non-profit organization.” The first is *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich. 661; 378 NW2d 737, (1985). There more recent case is *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734,740 (2006). The *Wexford* Court relied upon the *MUCC* case and refined the analysis of “charity” and “charitable institution.”

In *MUCC*, the Supreme Court provided the following analysis and discussion which would be referred to in *Wexford*:

The proper focus in this case is whether MUCC's activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.

It is clear that the activities summarized by the Tax Tribunal and the Court of Appeals do not amount to gifts for the benefit of an indefinite amount of persons or the general public without restriction. Although members of the public may occasionally visit MUCC's office building and use its library, petitioner's answers to interrogatories indicated that use of the property generally is not available to non-MUCC members. Washington testified that the use of the library by a nonmember depended on the purpose for which it was to be used. For example, students or other persons who wanted to research a particular resource management problem were granted permission to use the facilities. We do not consider these responses to be indicative of a benefit to the general public without restriction.

A vast majority of MUCC's publications are available to the general public for a fee. Although these fees often only cover the costs of publication, we cannot characterize their dissemination as a gift. See *Retirement Homes, supra*, pp 349-350. On the contrary, MUCC's purposes and activities benefit its members and others with an active interest in the conservation of our natural resources. Therefore, we agree with the tribunal's decision that the requisite charitable gift has not been conferred on the general public without restriction or on an indefinite number of people. *MUCC, supra* at 673-674.

The *Wexford* Court in analyzing *MUCC* and other cases found “several common threads”:

First, it is clear that the institution's activities as a whole must be examined; it is improper to focus on one particular facet or activity. In that sense, the inquiry pertains more to whether an institution could be considered a “charitable” one, rather than whether the institution offers charity or performs charitable work. So it is the overall nature of the institution, as opposed to its specific activities, that should be evaluated.

A second indispensable principle is 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 charity it offers. From these precepts, it naturally follows that each case is unique and deserving of separate examination. Consequently, there can be no threshold imposed under the statute. The Legislature provided no measuring device with which to gauge an institution's charitable composition, and we cannot presuppose the existence of one. To say that an institution must devote a certain percentage of its time or resources to charity before it merits a tax exemption places an artificial parameter on the

charitable institution statute that is unsanctioned by the Legislature. *Wexford, supra* at 212-213

The *Wexford* Court then discussed the concept of the “charity” and its application to a charitable institution stating:

We conclude that the definition set forth in *Retirement Homes, supra* at 348-349, 330 NW2d 682, [*Retirement Homes of Detroit Annual Conference of United Methodist v Sylvan Twp*, 416 Mich. 340, 330 N.W.2d 682 (1982.)] sufficiently encapsulates, without adding language to the statute, what a claimant must show to be granted a tax exemption as a charitable institution:

“[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.” [*Id.*, quoting *Jackson v Phillips*, 96 Mass (14 Allen) 539 (1867) (emphasis deleted; alterations in original).]

In light of this definition, certain factors come into play when determining whether an institution is a “charitable institution” under MCL 211.7o and MCL 211.9a. Among them are the following:

- (1) A "charitable institution" must be a nonprofit institution.
- (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
- (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
- (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year. *Wexford, supra* at 215.

From the above analysis it becomes clear that while in many respects the six criteria are interrelated; in order to answer the ultimate question as to whether the subject property is a charitable institution, it is useful to apply the facts of this case to each of these criteria.

(1) A "charitable institution" must be a nonprofit institution

Respondent and Petitioner, as well as this Tribunal, agree that the Petitioner is a non-profit organization as evidenced by the articles of incorporation and the need to have fund raisers and donations to operate.

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

Respondent and Petitioner dispute this element. The thrust of this disagreement boils down to the issue of what is charitable about this organization: the "Scholarships" or the gymnastics and other programs. Arguably, the charity could be both.

The parties have stipulated that Petitioner is a Section 501(c)(3) entity under the Internal Revenue Code and was formed to provide low-cost facilities for gymnastics, dance, and fitness for youth, but also provides classes for adults and students for additional activities such as ballroom dancing, karate, yoga, and step aerobics. Petitioner offers classes to the general public and Petitioner does not discriminate as to who can participate in the different classes on the basis of age, group, race, sex, or religious affiliation.

"Scholarships" are provided to those children who cannot afford program costs. The "scholarships" are charitable acts and they are a means to help bring the charity of gymnastics and dance to a greater number of people.

Wexford advocates looking at the “overall nature of the institution ... regardless of how much money it devotes to charitable activities.” *Wexford, supra* at 215. In this context, the Tribunal concludes that both the activities and the “scholarships” constitute *in toto* charity.

Respondent asserts that Petitioner is not being organized “chiefly” nor “solely for charity” because of the additional activities such as ballroom dancing, karate, yoga, and step aerobics that are offered. These are fee-based activities and are distinguishable from the gymnastics offered to the children.

Nevertheless, because no scholarships are offered for adult programs and because none of these programs are free or offered on a reduced cost basis, these other non-gymnastic and dance programs can be seen as endeavors to meet its operational costs.⁴ Criteria five allows for service charges so “long as the charges are not more than what is needed for its successful maintenance.” *Wexford, supra* at 215. Given that Petitioner is a nonprofit entity accountable to the State, there is nothing in the record that Petitioner “profits” from these service charges or that the charges are for any other reason than to defray operating costs.

(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.

The third factor under the *Wexford* decision requires that the “charitable institution” provides benefits without restriction. Respondent contends that Petitioner is not open to the public. The general public is not free to walk in and use the facility; rather, use is restricted to only those individuals who pay to participate in its programs.

⁴ It should be noted that the parties stipulated that Petitioner engages in fundraisers (through raffles, cookie dough sales, a silent auction, and a cartwheel-a-thon) and seeks grants and donations to cover its operating expenses.

Again, paying to participate is not fatal, as “long as the charges are not more than what is needed for its successful maintenance.” The Tribunal takes judicial notice of the fact that many exempt museums charge entry fees and, in many cases, membership fees. The entry fees may be prohibitive for some, but this does not mean that the museum is not open to the general public and that the fee cannot be waived. The membership fees provide preferential treatment, but are paid by choice and are not mandatory for entry to the museum.

The facts in this case are distinguishable from *MUCC*. In *MUCC* the public occasionally visited MUCC's office building and used its library but “petitioner's answers to interrogatories indicated that use of the property generally is not available to non-MUCC members. Washington testified that the use of the library by a nonmember depended on the purpose for which it was to be used. For example, students or other persons who wanted to research a particular resource management problem were granted permission to use the facilities.” The Court stated that “[w]e do not consider these responses to be indicative of a benefit to the general public without restriction.” *MUCC, supra* at 673-674.

In the case at hand, the parties stipulated that Petitioner offers classes to the general public and Petitioner does not discriminate as to who can participate in the different classes on the basis of age, group, race, sex, or religious affiliation. It is further stipulated that the services and classes offered by Petitioner are to promote physical fitness and mental discipline. There is nothing in the record that distinguishes a member from nonmember relative to the use of Petitioner's facilities as was the case in *MUCC*. And there is nothing in the record to suggest that the services offered are being denied to “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.

Respondent's argument is with the clause "people's minds and hearts," implying that because Petitioner discriminates among the group it purports to serve, Petitioner fails to meet the fourth requirement. Furthermore, Respondent distinguishes Petitioner's activities from the museum in *Kalamazoo Aviation* in that the museum is for the benefit of the general public without restriction and for the benefit of an indefinite number of persons. *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709; 346 NW2d 862 (1984). In contrast, Petitioner's gymnastic programs are only available to those who seek them. In other words, an indiscriminate group of people is not being relieved of disease, suffering or constraint.

In response to these arguments, the Court in *Wexford* in delineating the principles needed to determine the existence of a charitable institution stated that:

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 charity it offers. *Wexford, supra* at 213.

Petitioner has shown as to criteria three that its charity is nondiscriminatory. Furthermore, on the evidence presented it is clear that Petitioner serves a particular group or type of person, namely, those people who wish to avail themselves of the programs offered by Petitioner, i.e., services and classes promoting physical fitness and mental discipline. Finally, there is no question that the activities provided "relieve people's bodies from disease, suffering, or constraint."

(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.

Respondent contends that Petitioner earns more than what it needs to maintain its services and its facilities. The argument is that teachers are paid and the Director receives \$33,000 and a bonus. There is no tenet in the law to suggest that a staff of a nonprofit should not be paid. Furthermore, there is nothing on its face or in the evidence presented that suggests that the compensation paid the teachers and the Director is excessively high so as to conclude that the charge for its services are not more than what is needed for Petitioner's successful maintenance.

Additionally, evidence shows that Petitioner relies on donations and uses fundraising events to fund its operations because the fees charged are insufficient to defray the operating costs. This fact alone suggests that the charge for the services is not more than what is needed.

(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.

Respondent contends that "because the overall nature of Petitioner is not charitable, this factor does not come into the analysis." As shown by the discussion above, "the overall nature" of Petitioner is charitable. The monetary amount of the scholarships does not matter because the charity is both the scholarships and the nature of the services provided. As such, Petitioner is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

CONCLUSION

In summary, based upon the criteria as delineated in *Wexford*, the Tribunal holds that Petitioner has shown by a preponderance of the evidence that there is no genuine issue of material fact and Petitioner is entitled to a judgment as a matter of law that the subject property is

