

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

Second Impressions, Inc.,
Petitioner,

v

MTT Docket No. 322530

City of Kalamazoo,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

OPINION AND JUDGMENT

The issue to be resolved in this case is whether the retail store (the subject property) owned and operated by Petitioner, Second Impressions, Inc., as a nonprofit thrift store, is exempt from property taxes levied by the City of Kalamazoo (Respondent) under Section 7o of the General Property Tax Act (GPTA), being MCL 211.7o. Petitioner asserts that the subject property is exempt because Petitioner is a nonprofit charitable institution and that it utilizes the property for a charitable purpose. Respondent contends that because Petitioner utilizes the revenue generated from its store to reduce tuition payments for Kalamazoo Christian School Association students, Petitioner discriminates as to those who receive its charity. Given this, Respondent argues that Petitioner is not a charitable institution under MCL 211.7o and that the subject property does not qualify for a charitable exemption under the GPTA.

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 a charitable institution and that its request for a property tax exemption must be denied.

The subject property's 2006 and 2007 true cash value (TCV), assessed value (AV) and taxable value (TV), as originally established by Respondent are:

Parcel Number: 3906-33-289-058

Year	TCV	SEV	AV	TV
2006	\$779,442	\$389,721	\$366,300	\$389,721
2007	\$714,400	\$359,700	\$359,700	\$359,700

Petitioner's contentions of value are:

Parcel Number: 3906-33-289-058

Year	TCV	SEV	AV	TV
2006	\$779,442	\$389,721	\$366,300	\$0
2007	\$714,400	\$359,700	\$359,700	\$0

FINAL VALUES

The subject property's 2006 and 2007 true cash value (TCV), assessed value (AV) and taxable value (TV), as determined by the Tribunal are:

Parcel Number: 3906-33-289-058

Year	TCV	SEV	AV	TV
2006	\$779,442	\$389,721	\$366,300	\$389,721
2007	\$714,400	\$359,700	\$359,700	\$359,700

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 owns and occupies the subject property, located at 3750 S. Westnedge, Kalamazoo, Michigan. The property is classified as commercial real for property tax purposes and is operated as a retail

thrift store. Petitioner accepts donations of goods, primarily clothing and household items, from the public and then resells these goods. Petitioner uses the net proceeds from these sales:

. . .to reduce the amount of tuition that the students of the Kalamazoo Christian School Association have to pay. The tuition reduction is available to all Kalamazoo Christian School Association students; that is, there is no requirement for a student to show financial need. At any given time, there are approximately 1,100 students enrolled in the Kalamazoo Christian School Association. (Petitioner's Brief, p4)

Petitioner argues that it is a charitable institution under MCL 211.7o and, as such, the subject property is entitled to a property tax exemption. Petitioner believes that Respondent's objection to its request for an exemption is twofold. First, Petitioner believes that Respondent will argue that "since Petitioner's activities benefit a specific group of individuals, to wit, students who attend the Kalamazoo Christian Schools, it does not confer a benefit upon society in general." (Petitioner's Brief, p6) Second, Petitioner believes that Respondent will argue that Petitioner does not lessen the burden of government as it only assists those students attending Kalamazoo Christian Schools.

In response to the first objection, Petitioner argues that to require a charitable institution to confer a benefit on an indefinite number of persons "would prevent any charitable entity of any nature and any kind from qualifying for an exemption." (Petitioner's Brief, p7) Petitioner argues that with this interpretation, entities like the United Way, the American Cancer Society and the American Heart Association would not be tax exempt because these entities target their charity to specific groups, i.e., those who have cancer or heart disease.

In support of this argument, Petitioner cites *Gull Lake Bible Conference Association v Township of Ross*, 351 Mich 269; 88 NW2d 264 (1958). In that case the petitioner's charitable purpose was "[t]o promote and conduct gatherings at all seasons of the year for the study of the Bible and for inspirational and evangelical addresses." (*Id.*, p265) Petitioner argues that because

the Gull Lake Bible Conference Association benefited only a specific segment of the population, namely Christians, it did not confer a benefit upon society in general or upon an indefinite number of people. In spite of this, the Michigan Supreme Court held that it qualified for a property tax exemption. Petitioner asserts that the Court would make the same decision in this case.

Petitioner also cites *Pheasant Ring a/k/a Homes for Autism v Waterford Township*, 272 Mich App 436; 726 NW2d 741 (2007), and *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

The value of *Wexford, supra*, and *Pheasant Ring, supra*, is that they lend common sense meaning to terms such as “indefinite number of persons” and “society in general.” Rather than have those terms focus on numbers or masses, *Wexford, supra*, and *Pheasant Ring, supra*, opine those terms reference merely that whether the charitable institution serves an indefinite number of people [the question] to ask [is] does it serve “*any person who needs the particular type of charity being offered.*” (Emphasis added.) (Petitioner’s Brief, p10)

Petitioner asserts that because it does not discriminate as to which Kalamazoo Christian Schools Association student it offers tuition assistance, it meets the third part of the test for charitable exemptions set forth in *Wexford*¹.

In response to the second objection, specifically that Petitioner does not lessen the burdens of government, Petitioner argues that it lessens the burdens of government:

. . .by making Christian education affordable for students who, except for its affordability, would otherwise have to attend a government public school, financed by tax dollars. *Ipsa [facto]* that lessens the burdens of government. Each student in the Kalamazoo Christian School System is one less student government has to [educate] and therein its burden is lessened. (Petitioner’s Brief, p12)

¹ The six part test set forth in *Wexford* is discussed more fully in the Conclusion of Law section of the Opinion and Judgment.

RESPONDENT'S RESPONSE

Citing *Wexford, supra*, Respondent states that it does not believe Petitioner is a charitable institution because it discriminates as to those whom it offers its charity. In *Wexford*, the Michigan Supreme Court held that:

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 a particular type of charity being offered. (*Id.*, p215)

According to Respondent:

The Christian Schools are separate from the other types of schools that exist in Kalamazoo County. The other schools include a number of public school systems, several charter schools, and a Catholic school system (which also requires students to pay tuition). Students enrolled in these other school systems receive no benefit whatsoever from the monies generated by Petitioner's sales.

Given the above, it is clear that the literal, direct beneficiary of the sale proceeds is the Christian School Association; it then uses the money in such a manner that the ultimate beneficiaries are the tuition-paying parents of the students who attend the Christian schools. Students at the other schools in the area receive no benefit. (Respondent's Brief, p4)

In support of its position, Respondent also cites *Asher Foundation v East Lansing*, 88 Mich App 568; 278 NW2d 675 (1979). In that case the petitioner owned a building that housed Michigan State University students of the Christian Science faith. Claiming that the advancement of religion was a charitable purpose, the petitioner requested a property tax exemption as a charitable institution. The court denied the petitioner's request, holding that:

To qualify under that provision the organization must confer a benefit upon society in general. Whether, as in the instant case, the purpose of the organization is to benefit only a few select members of a particular sect there is not a sufficient widespread benefit to society to characterize this as a charitable institution. (*Id.*, p574)

Because Petitioner limits its charity to those students who attend Kalamazoo Christian Schools, Respondent argues that it is not a charitable institution under MCL 211.7o.

If [Petitioner] truly wanted to benefit “education” it would divide the money among all of the education systems in the area. That is not its desire; it does not want to support public education nor Charter School education nor Catholic School education. Instead, it desires only to benefit a small component of the area’s education network – the Christian schools. (Respondent’s Brief, p8)

Respondent also argues that a finding that Petitioner is eligible for a property tax exemption would violate Article VIII, Section 2, of the Michigan Constitution, which states, in pertinent part:

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition, voucher, subsidy, grant or loan of public money or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such non-public school. . . .

Respondent references an Attorney General Opinion in which the Attorney General discusses the 1970 ballot proposal that resulted in the amendment to Article VIII, Section 2.

Various proposals have been offered allowing children attending non-public schools or their parents to receive some assistance such as a tax deduction or a direct payment for the state. However, the second sentence of the proposed amendment in broad language prohibits payments or credits of this nature and the legislature. . . would not be permitted to adopt such methods of providing benefits. (OAG, 1970, No. 4715, p185 (November 3, 1970))

According to Respondent:

Petitioner’s thrift shop has exactly the sort of [effect] that the A.G. held the proposal would prohibit – a tax benefit or deduction for the parents of students attending a non-public school. While the A.G. was addressing a direct benefit, as opposed to the two-step process involved in Petitioner’s operation, that is a distinction without a difference. In each case there is a “tax benefit” afforded students of non-public schools. (Note: the A.G. distinguished and upheld the tax exemption of the school property itself). (Respondent’s Brief, p7)

In response to Petitioner's argument that charitable organizations like the American Cancer Society would not be eligible for a property tax exemption under Respondent's statutory interpretation, Respondent asserts that Petitioner is not framing the question correctly.

There can be no doubt that the Cancer Society would not [be] exempt if it provided services to those with cancer but only if such persons were Christian. Similarly, the Diabetes Association would certainly lose its exempt status if it limited its services to those with diabetes, but only if they were also Christian. (Respondent's Brief, p8)

In closing, Respondent states:

The "type" of charity Petitioner offers is to assist education. If it did so for all students, or some nondiscriminatory subset of students (i.e., kindergartners), Petitioner might well be exempt. But because it has elected to only assist in the education of those enrolled in the private Christian school, Petitioner does not satisfy the terms of *Wexford*. (Respondent's Brief, p9)

PETITIONER'S SUPPLEMENTAL BRIEF

Upon substitution of counsel, Petitioner filed a Motion requesting that the Stipulated Facts, as set forth below, be set aside. Petitioner also filed a Supplemental Brief and two affidavits. The purpose of the Motion and the Supplemental Brief was to provide additional information regarding Petitioner's activities. First, Petitioner wanted to insure that the Tribunal knew that, instead of selling all of the goods that it receives, it re-donates some of the goods to other charitable organizations. It does so because the volume is such that it cannot utilize it all at the subject property. Because this information had already been submitted, the Tribunal found it unnecessary to set aside the Stipulation of Facts for this purpose.

Second, Petitioner wished to change its position from that set forth in its Brief and in the fourth stipulated fact, specifically that: "The sole use of the proceeds of the sales, after expenses, is to reduce the amount of tuition that the students of the Kalamazoo Christian School Association have to pay." To support this change in position, Petitioner submitted an affidavit

by Mr. Henry Holland, the Chief Financial Officer of the Kalamazoo Christian School Association (KCSA). In his affidavit, Mr. Holland states that KCSA uses at least \$50,000 of the revenue received from Petitioner each year for the payment of a capital debt obligation. While the Tribunal accepts Mr. Holland's statement as true and will consider this statement in its decision, these reasons were insufficient to set aside the parties' Stipulation of Facts.

STIPULATED FACTS

The parties stipulated to the following facts:

1. Petitioner is a Michigan non-profit corporation, whose principal office address is 2121 Stadium Drive, Kalamazoo, Michigan 49008.
2. Petitioner is a registered 501(c)(3) charitable organization.
3. The real property at issue is located at 3750 S. Westnedge in the City of Kalamazoo; from the commercial structure that there exists Petitioner operates a retail store open to the public. The store's sole purpose is to sell used merchandise, primarily clothes and household items, that was previously donated to Petitioner for that purpose.
4. The sole use of the proceeds of the sales, after expenses, is to reduce the amount of tuition that the students of the Kalamazoo Christian School Association have to pay.
5. The tuition reduction is available to all Kalamazoo Christian School Association Students; that is, there is no requirement for a student to show financial need.
6. At any given time, there are approximately 1,100 students enrolled in the Kalamazoo Christian School Association.
7. Petitioner is run by an independent Board of Directors.
8. All of Petitioner's workers are volunteers.
9. Petitioner has no paid employees.
10. Respondent, the City of Kalamazoo, levies and collects the property taxes on the subject property.

11. The property identification number is 06-[33]-289-058 and the property is classified as "C1" commercial real property.
12. Petitioner sought a tax exemption as a non-profit charitable institution, pursuant to MCL [211.7o].
13. Petitioner's request for the MCL [211.7o] tax exemption was denied by the City Assessor for the City of Kalamazoo.
14. Said denial was appealed to the Board of Review for the City of Kalamazoo and said Board of Review denied the granting of the exemption.
15. For tax year 2006, Respondent determined an assessed value of \$366,300 and a state equalized value of \$389,721, and a taxable value of \$389,721.
16. On March 16, 2006, Petitioner appeared before the appropriate local Board of Review and Appealed the 2006 assessment of the subject property. The Board of Review denied the relief requested and affirmed the assessments.

EXHIBITS

The parties submitted the following exhibits:

1. Exhibit A to the Mortgage and Security Agreement between Second Impressions and National City Bank.
2. Petitioner's Articles of Incorporation.
3. Petitioner's Bylaws.
4. Form SS-4, Application for Employer Identification Number, filed by Petitioner.
5. IRS Notice dated August 9, 2002, assigning Petitioner an employer identification number.
6. Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code, signed November 15, 2002.
7. Letter from the IRS to Petitioner, dated December 9, 2002, informing Petitioner that it has been granted an exemption from federal income tax as a 501(c)(3) organization.

8. Warranty Deed transferring the subject property to Petitioner, dated January 3, 2005.
9. A list of Petitioner's Board of Directors.
10. Petitioner's Mission Statement.
11. A list of "charities which Second Impressions has been able to support by sharing some of the donations the store has received."
12. 2006 Notice of Assessment, taxable valuation and property classification for the subject property.
13. Petitioner's application for exemption filed with Respondent.

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 211.7o. 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. Charitable institutions have been recognized as an exempt class. Because Petitioner is attempting to establish membership in this class, the preponderance of evidence standard applies.

The exemption for real 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 it was incorporated is exempt from the collection of taxes under this act.

Wexford, supra, a case cited by both parties, is the most recent Michigan Supreme Court decision dealing with charitable property tax exemptions. In *Wexford*, the Court was asked 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 its decision, the Court first examined the definition of "charitable institution." 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. (*Wexford*, 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). In doing so, the Court held 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 six-part test must be considered when determining whether an institution is a “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 these tests to the case at hand, there is no dispute that Petitioner is a nonprofit institution and, as such, satisfies the first test. 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.*, pp605-606)

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

The next *Wexford* test to be considered is whether Petitioner is organized chiefly, if not solely, for charity. To determine whether Petitioner meets this test, the purposes for which Petitioner was organized must be examined. 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)

Petitioner's Articles of Incorporation provide, in pertinent part:

1. The purposes for which the Corporation is organized are as follows:
 - (a) To receive donated goods from businesses and the general public and to sell these donated goods to the general public and to donate these goods to needy persons of Kalamazoo County.
 - (b) To operate exclusively for the benefit of, to perform the functions of, to carry out the purposes of, Kalamazoo Christian School Association, a charitable organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue code of 1986, as amended (the “Code”) and which is described in Sections 509(a)(1) or 509(a)(2) of the Code. Kalamazoo Christian School Association, as presently organized, owns and operates Christian pre-schools, grade schools and a high school in the area of Kalamazoo, Michigan.
- ***
- (e) To make gifts and grants of property for the support of charitable activities.
 - (f) To donate to Kalamazoo Christian School Association (“KCSA”) the net profits earned by the Corporation from the sale of donated goods

so that KCSA can reduce the tuition of every student who attends a Kalamazoo Christian School in grades Kindergarten through twelve.

Petitioner's Articles further indicate that Petitioner is organized on a stock basis. According to Petitioner's Bylaws, Petitioner's sole shareholder is KCSA. Additionally, the Articles provide that "[i]n the event of the dissolution of the Corporation, all of the Corporation's assets, real and personal, shall be distributed to Kalamazoo Christian School Association. . . ."

Other documents that can be reviewed to determine a petitioner's purpose for owning property include those filed with the federal government. In this case, Petitioner states in its Application for Employer Identification Number (FormSS-4) that its "principal purpose is to operate exclusively for the benefit of, to perform the functions of, and to carry out the purposes of Kalamazoo Christian School Association." In this Form, Petitioner also states:

The Association charges tuition for students to attend its schools. The Association desires to raise funds that can be used to reduce its tuition charges and also off-set other costs it may incur in connection with its school. To this end, the Association has caused Second Impressions to be incorporated.

All profits earned from the operation of the thrift shop will be paid by Second Impressions to the Association. Second Impressions Articles of Incorporation . . .state that these profits are to be given to the Association so that it "can reduce the tuition of every student who attends a Kalamazoo Christian School in grades Kindergarten through twelve."

The operation of the thrift shop is something that could be performed directly by the Association. Second Impressions was organized as a separate corporation to protect the Association from any claims of potential liability that might arise from the operation of a thrift store. Second Impressions is organized as a stock-based corporation and the Association is its sole shareholder.

The organization [Petitioner] is controlled by Kalamazoo Christian School Association, which is its sole shareholder. The applicant [Petitioner] will also pay all of its profits to Kalamazoo Christian Association. This gives the applicant a special relationship to Kalamazoo Christian Association.

Finally, Petitioner's Mission Statement states:

The Second Impressions Thrift Shoppe, operated by volunteers committed to biblical principles of stewardship, exists to make Christian education affordable to more families, thereby promoting a biblical vision for life and the advancement of God's kingdom. This is achieved by selling donated items to the Kalamazoo community, with proceeds going to reduce tuition for all K-12 students in the Kalamazoo Christian Schools.

In light of these documents, it is clear that Petitioner's overriding purpose for being is to operate a thrift store with the proceeds being dedicated to the KCSA to reduce tuition payments for its students. Petitioner's attempt to sway the Tribunal's decision away from this conclusion through Mr. Holland's affidavit fails. In his affidavit, Mr. Holland states that Petitioner's funds are donated to the KCSA without restriction as to its use and, in fact, the Association uses \$50,000 of the funds for payment of a capital debt obligation. However, without Petitioner's donations, tuition would undoubtedly be increased to pay for this debt. Thus, either directly or indirectly, the funds donated by Petitioner reduce tuition payments for the KCSA students. Even if Petitioner were to disagree, the fact remains that all of the documents prepared and submitted by Petitioner, namely Petitioner's Articles of Incorporation, Petitioner's IRS filings, and Petitioner's Mission Statement indicate that this is the purpose for which Petitioner was organized. It is this purpose that must be evaluated, not the purpose for which KCSA may ultimately use Petitioner's donations.

Petitioner submitted a list of organizations and countries to which it re-donated some of the items it received. However, while this is clearly authorized by its Articles of Incorporation, the only reason Petitioner gave for this activity is that it receives too many items to sell at the subject property. Thus, if donations were not as plentiful, Petitioner would keep the donations

for sale at its store. The Tribunal notes that while this list includes an estimate of the dollar value of the donations, Petitioner has not submitted any information as to the donations it makes to KCSA.

Having concluded that Petitioner was organized to operate a thrift store, the proceeds of which go to reduce tuition payments for students of KCSA, it must be determined whether this purpose equates to Petitioner being chiefly, if not solely, organized for charity. In *Wexford*, the Court 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).

[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)

Given that Petitioner's ultimate purpose is to provide funding to the KCSA, the Tribunal finds that Petitioner was organized solely for charity. Petitioner meets the second *Wexford* test.

However, even though the Tribunal finds that Petitioner was organized for charity, this finding does not mean that Petitioner is a charitable institution. In fact, the Tribunal finds that Petitioner does not meet the third *Wexford* test and, as such, is not a charitable institution. Contrary to Petitioner's assertion, Respondent's reason for believing that Petitioner does not qualify for an exemption under MCL 211.7o is not due to *the number of people* to whom Petitioner gives its charity, it is due to the fact that it *discriminates as to whom* it gives its charity. The Tribunal agrees. In *Wexford*, the Court 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)

This analysis led the Court to the third test, specifically that:

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. (*Id.*, p215)

Petitioner appears to argue that it meets this test because it provides tuition assistance to any student in the KCSA schools whether or not they are in need of financial assistance. In other words, Petitioner has defined the "group" that it serves as only KCSA students. The Tribunal finds that this definition is self-serving and too narrow.

In *Michigan Christian Campus Ministries, Inc v City of Mount Pleasant*, 110 Mich App 787; 314 NW2d 482 (1982), the court held: "In order to qualify for the charitable exemption, the organization must. . .confer a benefit upon society in general." (*Id.*, p795) But for its limited "re-donations," Petitioner does not confer a benefit upon society in general; its sole purpose is to provide charity to KCSA. Petitioner does not serve K through 12 students in general; Petitioner only serves those K through 12 students enrolled in the schools operated by its sole shareholder, KCSA. As Respondent stated, Petitioner:

. . .does not want to support public education nor Charter School education nor Catholic School education. Instead, it desires only to benefit a small component of the area's education network – the Christian schools. (Respondent's Brief, p8)

In this way, Petitioner is similar to the petitioner in *Asher Student Foundation, supra*.

Petitioner's purpose is to benefit "a few select members of a particular sect. . . ." (*Id.*, p574)

The Tribunal finds Petitioner's reliance on the Court's decision in *Gull Lake* insufficient.

In that case, the discussion as to whether the petitioner was a charitable institution was limited;

to wit:

The plaintiff corporation was organized as a non-profit corporation. The proofs show conclusively that it is not operated for profit. It has no stockholders. Aside from modest salaries paid to necessary employees, no individual receives any pecuniary benefit from its operation. It practices no discrimination as to race, creed or color. Having in mind the purpose for which it was formed as set forth in Article 2 of its Articles of Association, the conclusion is inescapable that it is a charitable organization and such is the decision of this Court. (*Id.*, p274)

Thus, there was no discussion as to whether the petitioner offered "its charity on a discriminatory basis by choosing, who among the group it purports to serve, deserves the services." (*Wexford*, p215) Instead, the only consideration paid to discrimination in that case was to race, creed or color.

For these reasons, the Tribunal finds that Petitioner fails to meet the third *Wexford* test. As such, Petitioner does not qualify as a charitable institution and its claim of exemption under MCL 211.7o must be denied. Because the Tribunal has made this finding, it is not necessary to address Petitioner's claim that it lessens the burden of government.

Therefore,

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 is DENIED.

IT IS FURTHER ORDERED that the subject property's assessed and taxable values for the 2006 and 2007 tax years are those indicated in the Final Values section of this Opinion and Judgment.

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: May 24, 2011

By: Patricia L. Halm