

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

FRATERNAL ORDER OF POLICE #112,
Petitioner,

v

MTT Docket No. 335146

CHESTERFIELD TOWNSHIP,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

OPINION AND JUDGMENT

This case involves Petitioner's claim that parcel number 015-009-011-300-011, located in Chesterfield Township, County of Macomb is exempt from ad valorem taxation. This case also involves Respondent's claim that the Tribunal lacks jurisdiction over the 2009 and 2010 tax years because the subject property was conveyed by Petitioner to FOP A 112 in 2008 and FOP A 112 is not a proper party to the appeal. Thomas C. Rombach represented Petitioner. Lawrence W. Dloski, of the firm Seibert and Dloski, PLLC, represented Respondent. The hearing was held on September 21, 2010. Petitioner filed its "Brief in Lieu of Closing Argument" on October 21, 2010. Respondent filed its "Post Hearing Brief" on October 19, 2010.

The Tribunal finds that it has jurisdiction over the 2009 and 2010 tax years with respect to Petitioner only. Although the subject property was conveyed by Petitioner to FOP A 112 in 2008, Petitioner continued to occupy the subject property as it had for prior years. Because Michigan statute provides that subsequent tax years will be added where exemption is an issue, the Tribunal will address Petitioner's exemption contention for all tax years at issue. However, the Tribunal finds that FOP A 112 is not a proper party to this appeal for the 2009 and 2010 tax years because neither Petitioner nor FOP A 112 filed a motion to amend the petition to add FOP

A 112 as a party to the appeal, nor did FOP A 112 file a separate petition with the Tribunal for the 2009 and 2010 tax years.

The Tribunal further finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did not prove by a preponderance of the evidence that it is a charitable organization pursuant to MCL 211.7o. As such, the subject property is not exempt from ad valorem property taxes. The subject property's true cash values (TCV), state equalized values (SEV), and taxable values (TV) are:

Parcel Number	Year	TCV	SEV	TV
015-009-011-300-011	2007	\$892,228	\$446,114	\$408,883
015-009-011-300-011	2008*	\$934,096	\$467,048	\$418,287
015-009-011-300-011	2009*	\$816,600	\$408,300	\$408,300
015-009-011-300-011	2010*	\$825,900	\$412,950	\$407,075

*Pursuant to MCL 205.737(5)(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 the appeal at the time of the hearing on the petition.” In the instant case, such a request was not made. Therefore, tax years 2008, 2009 and 2010 are automatically added to this petition.

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property, which consists of approximately ten acres of land, a lodge and outbuildings, is exempt from taxation under MCL 211.7o for the 2007 and 2008 tax years because Petitioner Fraternal Order of Police #112 is a nonprofit charitable organization exempt from federal taxation under Section 501(c)(8) that owned and occupied the subject real property and used the property solely for the purposes for which it was organized.

Petitioner further contends that because the subject property was conveyed on October 20, 2008 by Petitioner to FOP A 112, a separate entity exempt from federal taxation under Section 501(c)(3), the subject property is also exempt from taxation under MCL 211.7o for the 2009 and 2010 tax years because FOP A 112 owns and occupies the subject property and uses the property solely for the purposes for which it was organized. Petitioner further contends that FOP A 112, as a “successor corporation to a substantial part (the charitable arm) of the Fraternal Order of Police #112” is a proper party to this appeal.

PETITIONER’S EXHIBITS

- P-1. Fraternal Order of Police #112 Charter dated October 1, 1947.
- P-2. Fraternal Order of Police #112 Articles of Incorporation.
- P-3. Fraternal Order of Police #112 Notice of Employer Identification Number.
- P-4. Correspondence from Internal Revenue Service dated March 6, 2000 granting tax-exempt status of Fraternal Order of Police #112 under section 501(c)(8) of the Internal Revenue Code, as amended.
- P-5. Correspondence from Internal Revenue Service dated April 13, 2006 granting tax-exempt status of Grand Lodge Fraternal Order of Police Associates under section 501(c)(3) of the Internal Revenue Code, as amended.
- P-6. Application for Employer Identification Number dated September 10, 2007 for FOP A 112.
- P-7. Notice of Employer Identification Number for FOP A 112, dated September 25, 2007.
- P-8. Filing Endorsement from Michigan Department of Labor & Economic Growth for Articles of Incorporation – Nonprofit for FOP A 112 dated December 27, 2007.

P-9. Undated correspondence authorizing use of Grand Lodge Fraternal Order of Police

Associates use of 501(c)(3) tax-exempt status.

P-10. Quit Claim Deed dated October 20, 2008 conveying property commonly known as 33845
24 Mile Rd., Chesterfield, MI 48047 from Fraternal Order of Police, Macomb County Lodge No.
112-Building Corporation to FOP A 112.

P-11. IRS Form 990 for the 2005 tax year filed by Fraternal Order of Police 112.

P-12. IRS Form 990 for the 2006 tax year filed by Fraternal Order of Police 112.

P-13. IRS Form 990 for the 2007 tax year filed by Fraternal Order of Police 112.

P-14. IRS Form 990 for the 2008 tax year filed by Fraternal Order of Police 112.

P-15. IRS Form 990 for the 2008 tax year filed by FOP A 112.

P-16. IRS Form 990-EZ for the 2009 tax year filed by FOP A 112.

P-17. Unsigned and undated "Summary of Charitable Activities for 2006 at subject property."

P-18. Unsigned and undated "Summary of Charitable Activities for 2007 at subject property."

P-19. Unsigned and undated "Summary of Charitable Activities for 2008 at subject property."

P-20. Unsigned and undated "Summary of Charitable Activities for 2009 at subject property."

P-21. Unsigned and undated "Summary of Charitable Activities for 2010 at subject property."

PETITIONER'S WITNESS

Laurence Smith, President of Fraternal Order of Police #112, was Petitioner's sole witness. Mr. Smith testified that he has been a member of Petitioner since 1969 and has been its President for 21 years (Transcript, p.12). In addition to supporting the admission of the twenty-one exhibits presented by Petitioner, Mr. Smith further testified that Petitioner (i) is tax exempt

under Section 501(c)(8) of the Internal Revenue Code (Transcript, p. 20), (ii) raises money that is used to make our mortgage payment; take care of maintenance on the building; maintain the properties, and then from the balance of that, our monies go to charities” (Transcript, p. 45), (iii) rents the subject property for “graduation parties, First Communion, birthday parties, retirements, weddings. It could be just about anything for \$350 per day for any day but Saturday and for \$500 on Saturday.” (Transcript, p. 45, 46), (iv) donates the property to other charitable organizations, including churches, schools, police departments, fire departments, Boy Scouts, Girl Scouts, Cancer Society, Chamber of Commerce, senior citizens for fundraisers and other uses (Transcript, p. 48), (v) offers a hayride at no cost to anyone who would like to attend (Transcript, p. 60), (vi) raises funds through raffles, bingo and 50/50 drawings (Transcript, p. 61,62) and a golf outing (Transcript, p. 77), (vii) annually conducts its “Shop with a Cop” program (Transcript, p. 80 -87); and (viii) conducts fundraisers for Juvenile Diabetes Research Foundation and Special Olympics (Transcript, p. 80)

Mr. Smith further clarified that FOP A 112 (i) was formed as a separate entity in December, 2007 (Transcript, p. 30), (ii) is comprised of “non-police officers . . . wanting to be involved in the programs that we do” (Transcript, p. 22), (iii) was granted tax exempt status by the IRS under Section 501(c)(3) of the Internal Revenue Code (Transcript, p.24), (iv) is a separate organization from Petitioner with their “own board” (Transcript, p 24), (v) was incorporated to “help fallen - - fallen police officers families and low income families at Christmas” (Transcript, p. 29), (vi) is the owner of the subject property as of October 20, 2008 by virtue of a Quit Claim Deed from Petitioner to FOP A 112 (Transcript, p. 33), (vii) receives funds from Petitioner generated by its programs (Transcript, p. 88, 89), (viii) receives rental

income from Petitioner as funds are available (Transcript, p. 100), and (ix) was created because the Associate Group is “the backbone of our organization” (Transcript p.98).

Mr. Smith further testified that while he is President of Petitioner, he is not a member or officer of FOP A 112. However, Mr. Smith did testify that Diane Gray is the treasurer for both Petitioner and FOP A 112 (Transcript, p. 31, 42), and that a combined record book is kept by Petitioner and FOP A 112 for scheduled uses of the subject property (Transcript, p. 70).

PETITIONER’S ARGUMENT

With respect to Respondent’s argument that neither Petitioner nor FOP A 112 is a proper party to the subject appeal for the 2009 and 2010 tax years, Petitioner contends that FOP A 112 is a proper party to this appeal because (i) the ALJ conducting the Prehearing for this case consolidated all tax years, (ii) Respondent was aware of the transfer of ownership of the subject parcel from Petitioner to FOP A 112 in 2008 because tax bills for 2009 and 2010 reflect FOP A 112’s ownership of the subject property, (iii) FOP A 112 “is a successor corporation to a substantial part (the charitable arm)” of Petitioner, (iv) “no real consideration was given for the transfer” of the subject property to FOP A 112, (v) the Quit Claim Deed is exempt from County Revenue Transfer Tax and State Revenue Tax, and (vi) MCL 205.737 authorizes the Tribunal to “consolidate and decide Petitioner’s appeal.”

Petitioner contends that it is exempt from ad valorem real property taxes for the 2007 and 2008 tax years pursuant to MCL 211.7o. Citing *Fraternal Order of Eagles Aerie 2535 Inc v Big Rapids Township*, MTT Docket No. 284100 (March 17, 2003) and *Fraternal Order of Eagles Owosso, Michigan Aerie 851 v City of Owosso*, MTT Docket No. 277272 (September 30, 2003),

which held that Petitioners' property in these cases was not exempt because its charitable contributions were de minimis, Petitioner contends that its charitable contributions were substantial. Specifically, Petitioner states that the evidence shows that Petitioner's primary purpose is to "assist low income families," funds were raised each year "for the Shop With A Cop" program, the hall was "donated to other non-profit, charitable, religious and governmental organizations simply upon request," Petitioner "sponsored other charitable volunteer activities and made some direct monetary donations to charity." Acknowledging that "exemptions from taxation are to be strictly construed in favor of the taxing unit," *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980), and that "an entity's federal income tax status is not a determining factor for exemption from Michigan property taxes, *American Concrete Institute v State Tax Commission*, 12 Mich App 595; 163 NW2d 508 (1968), Petitioner relies on the three-part test to determine whether a taxpayer would qualify for the MCL 211.7o exemption that was established in *Engineering Society of Detroit v Detroit*, 308 Mich 539 (1944) and *McCormick Foundation v Wawatam Township*, 186 Mich App 511 (1990). In this regard, Petitioner concludes that the subject property is exempt from property tax as a charitable organization because the real property is owned and occupied by Petitioner for the 2007 and 2008 tax years, Petitioner is a charitable organization, and the real property is occupied solely for the purposes for which it was incorporated.

For the 2009 and 2010 tax years, Petitioner contends that as Petitioner's "successor-in-interest," FOP A 112 was the owner of the subject property, was incorporated in Michigan as a non-profit corporation, received "501(c)(3) status from the Internal Revenue Service," was formed to "help fallen police officers (sic) families and low income families at Christmas," and

therefore satisfies the tests for exemption established in *Engineering Society* and *McCormick Foundation*. Again, Petitioner contends that the charitable contributions made by FOP A 112 must be considered “substantial rather than de minimus” and therefore “FOP A 112 is a nonprofit charitable institution within the definition contained in MCL 211.7o(1).”

RESPONDENT’S CONTENTIONS

Respondent contends that the subject property is not exempt from taxation under MCL 211.7o because “although Petitioner is involved in many benevolent acts” Petitioner’s use of the subject property “is not solely for charitable purposes nor was FOP #112 incorporated for charitable purposes.” Respondent contends that it has properly determined the true cash value of the subject property for the tax years at issue. Respondent further contends that the Tribunal does not have jurisdiction over the 2009 and 2010 tax years because Petitioner did not own the subject property during those tax years.

RESPONDENT’S EXHIBITS

R-1. Assessment records for the subject property.

RESPONDENT’S WITNESSES

Steven Mellen, Macomb County Equalization Director, testified that (i) his office was the contract assessor for Respondent from 2008 to 2010 (Transcript, p. 108), (ii) the federal designation of 501(c)(3) does not guarantee an entity a property tax exemption because “as soon as they become an income producing property, they become a taxable entity, whether they’re owned – ownership does not necessarily guarantee it, an exemption” (Transcript, p. 111), (iii) federal designation of 501(c)(8) does not guarantee a property tax exemption (Transcript, p.

112), and (iv) because the subject property “is a rental hall that’s rented out” it is income producing property and therefore not exempt (Transcript, p. 113).

RESPONDENT’S ARGUMENT

Respondent contends that the Tribunal does not have jurisdiction over the 2009 and 2010 tax years because (i) Respondent conveyed the subject property to FOP A 112 in October, 2008, (ii) FOP A 112 “was incorporated as a separate entity and for separate purposes,” (iii) FOP A 112 “did not contest the real property assessments for the tax years 2009 and 2010,” (iv) “[t]he distinction between FOP #112 and A112 appears to be exceptionally blurred and being done so in a deliberate manner,” (v) “what is clear is that the first requirement, in order to qualify for a charitable exemption, is that ‘the real estate must be owned and occupied by the exemption claimant.’ *Engineering Society of Detroit* at 542,” (vi) “it is uncontested that A112 did not claim an exemption for the tax years 2009 and 2010 and that FOP #112 did not own the realty in 2009 or 2010 and therefore cannot request an exemption,” (vii) “FOP #112 did not amend its pleadings before the Tribunal to include A112 as a party in interest,” (viii) FOP #112 did not file a motion to amend its pleadings to include the A112 in these proceedings,” (ix) “FOP #112 is the only party in interest with respect to the realty and can only request that this Tribunal examine the tax years for which the FOP#112 owned the realty, being 2007 and 2008,” and (x) “[t]he assessments for 2009 and 2010 have not been challenged by the property owner.”

Respondent contends that Petitioner is not exempt from property tax because (i) Petitioner’s Articles of Incorporation fail to state an intended charitable purpose as is required in *Engineering Society of Detroit v Detroit, supra*, (ii) Petitioner’s “ownership and occupancy of the real property has not been and is not currently solely for a charitable purpose,” (iii) Petitioner’s use of

the subject property “does not relieve a burden which would otherwise be imposed upon government” (*Ladies Literary Club, id*), (iv) “[t]here is no question that Petitioner does many wonderful things for the community, however, those benevolent acts do not qualify the Petitioner, on the relevant tax days, as a non-profit charitable institution with the definition of MCL 211.7o(1),” (v) “[t]here exists no legal authority for the implied assertion that use of the realty in order to raise money for benevolent causes qualifies FOP #112 as a charity entitled to an exemption” (*Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Township, Washtenaw County*, 416 Mich 340, 348-349; *Michigan United Conservation Clubs v Township of Lansing*, 423 Mich 461 (1985)).

FINDINGS OF FACT

1. The subject property is classified as commercial real property and consists of ten (10) acres of land improved with a 7,450 square foot, one-story building containing a 5,000 square foot basement, located at 33845 24 Mile Road, New Baltimore, MI 48047.
2. The true cash values, assessed values and taxable values determined by Respondent for the tax years at issue are:

Parcel Number	Year	TCV	SEV	TV
015-009-011-300-011	2007	\$892,228	\$446,114	\$408,883
015-009-011-300-011	2008	\$934,096	\$467,048	\$418,287
015-009-011-300-011	2009	\$816,600	\$408,300	\$408,300
015-009-011-300-011	2010	\$825,900	\$412,950	\$407,075

3. Petitioner is a lodge that is organized as a non-profit corporation under Section 501(c)(8) of the Internal Revenue Code.
4. Petitioner is a membership-based organization.
5. Petitioner received 501(c)(8) status from the Internal Revenue Service on March 6, 2000 under a group ruling issued to Fraternal Order of Police Grand Lodge, located in Oak Park, Illinois.
6. The purpose for which Petitioner was incorporated is stated in Article II of its Articles of Incorporation dated August 2, 1968 (as amended) as follows:

“To acquire, maintain, manage, and improve premises to be used by the Fraternal Order of Police, Macomb County Lodge No. 112, for private or public purposes; further, to have the power to sell, mortgage, borrow, lease, or purchase real and personal property to be used therewith.”
7. FOP A 112 was incorporated on December 27, 2007 as a Michigan Nonprofit Corporation.
8. The purpose for which FOP A 112 was incorporated was to “help fallen police officers['] families and low income families at Christmas.”
9. FOP A 112 received 501(c)(3) status from the Internal Revenue Service under a group ruling issued to Grand Lodge Fraternal Order of Police Associates dated April 13, 2006.
10. The subject property was owned and occupied by Petitioner on the December 31, 2006 and December 31, 2007 assessment dates.
11. Petitioner conveyed the subject property to FOP A 112 by Quit Claim Deed on October 20, 2008.
12. Membership in Petitioner is open to active and retired police officers.

13. Membership in FOP A 112 is open to the public.
14. Petitioner and FOP A 112 are separate organizations with separate boards of directors.
15. Petitioner and FOP A 112 meet collectively and “do everything together,”
16. Petitioner and FOP A 112 raise money “to make sure that we have enough money to make our mortgage payment; take care of maintenance on the building; maintain the properties and then from the balance of that, our monies go to charities.”
17. The subject property is rented out by Petitioner for \$350 per day for any day except Saturday; on Saturdays the subject property is rented for \$500 per day.
18. Rentals of the subject property might be for graduation parties, First Communions, birthday parties, retirements, weddings, “just about anything.”
19. Use of the subject property is donated to charitable organizations such as churches, schools, Boy Scouts, Girl Scouts, as well as other tax-exempt entities such as municipalities, state police and Chambers of Commerce.
20. Petitioner and FOP A 112 raise money through 50/50 raffles, annual motorcycle raffle, bingo, annual golf outing and poker tournaments,
21. Petitioner and FOP A 112 provide hayrides for all interested individuals at Halloween.
22. Petitioner and FOP A 112 conduct an annual “Shop with a Cop” program, which identifies “less fortunate” kids through police departments, schools and the D.A.R.E. program, and gives them each \$100 for Christmas shopping
23. Petitioner does not have a rental agreement with FOP A 112, nor does it pay a specific monthly or annual rent to FOP A 112. Instead, Petitioner pays excess funds to FOP A 112 to be used by FOP A 112 for charitable endeavors.

ISSUES AND CONCLUSIONS OF LAW

1. Does the Tribunal have jurisdiction over this appeal for the 2009 and 2010 tax years?

MCL 205.735a(5) provides that the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition with the Tribunal. Further, MCL 205.735a(9) provides that a petition may be amended at any time by leave of the tribunal and in compliance with its rules. Further, MCL 205.735(4) requires a petitioner to file a motion to amend its petition to include subsequent years unless the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation (MCL 205.737(5)). Thus, the Tribunal finds that because Petitioner properly filed its Petition for the 2007 tax year, and because Petitioner's claim is one of exemption, the Tribunal has jurisdiction over Petitioner's claim of exemption for the tax years 2007 through 2010. However, because Petitioner did transfer ownership of the subject property in 2008, Petitioner did not "own and occupy" the subject property for charitable purposes during 2009 and 2010 as is required by MCL 211.7o . Therefore, Petitioner's claim of exemption for the 2009 and 2010 tax years is without merit.

Although the facts support Petitioner's contention that FOP A 112 "owned and occupied" the subject property for the 2009 and 2010 tax years, FOP A 112 did not file a petition with the Tribunal for those years. Absent the filing of a separate petition by FOP A 112, or a motion from Petitioner to the Tribunal requesting that the Tribunal substitute FOP A 112 (as the new owner of the subject property) as Petitioner, the Tribunal finds that it has no legal authority under which it can assume jurisdiction over this appeal as it relates to FOP A 112 for the 2009 and 2010 tax years. Petitioner's reliance on Respondent's knowledge of the transfer of ownership is misplaced. The obligation to properly amend or file a Petition with the Tribunal is the

responsibility of the petitioner and not the respondent. Further, Petitioner's statement that FOP A 112 is a "successor corporation to a substantial part (the charitable arm)" of Petitioner lacks any legal authority to support Petitioner's contention that FOP A 112 can substitute for Petitioner for the 2009 and 2010 tax years without either a motion or the separate filing of a new petition. Petitioner cites no authority in support of its contention that the Tribunal has jurisdiction over the 2009 and 2010 tax years with respect to FOP A 112.

2. Is Petitioner a charitable institution eligible for tax-exempt status under MCL 211.7o?

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.) Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. *Retirement Homes, supra; APCOA, Inc v Dep't of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995). 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.* 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.

(Also, see *Holland House v Grand Rapids*, 219 Mich App 384, 394-395; 557 NW2d118 (1996).)

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.

In *Wexford Medical Group v Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006), the Michigan Supreme Court confirmed the test for exempting certain property from property taxes under MCL 211.7(o):

- (1) The real estate must be owned and occupied by the exemption claimant;
- (2) The exemption claimant must be a non profit 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.

In the instant case, the parties agree that Petitioner meets the first part of the test for the 2007 and 2008 tax years, as Petitioner did own and occupy the subject property. However, because Petitioner conveyed the subject property to FOP A 112 in 2008, the Tribunal finds that Petitioner did not own the subject property for the 2009 and 2010 tax years. As a result, Petitioner does not satisfy the first part of the test established to determine whether a property is exempt under MCL 211.7(o) for the 2009 and 2010 tax years.

The parties disagree, however, whether Petitioner meets the second and third parts of the test. The third part of the test requires that “the property must be occupied by the petitioner solely for the purposes for which the petitioner was incorporated.” Here, the evidence clearly shows that Petitioner was incorporated in 1968 “to acquire, maintain, manage and improve premises to be used by the Fraternal Order of Police, Macomb County Lodge No. 112, for private or public purposes; further, to have the power to sell, mortgage, borrow, lease, or purchase real and personal property to be used therewith.” Petitioner has provided no evidence that the purpose of Petitioner has been amended or revised since its incorporation in 1968. Thus, while Petitioner may have actually been occupying the subject property for the purpose for which the organization was incorporated for 2007 and 2008, and while Petitioner may actually have provided some charitable activity during those years, said stated purpose of the organization clearly has no intended charitable activity.

If the Tribunal gives Petitioner the benefit of the doubt with respect to the third part of the test confirmed by the Michigan Supreme Court in *Wexford*, Petitioner must still prove by a preponderance of the evidence that it is a “charitable institution.” In this regard, the Michigan Supreme Court concluded that the “institution’s activities as a whole must be examined.” (See

Michigan United Conservation Clubs v Lansing Township, 423 Mich 661; 378 NW2d 737 (1985) (“*MUCC*”), which held that “[t]he 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.” (Emphasis added.) (*Id.* at 673.)

Whether an institution is a charitable institution is a fact specific question that requires examining the claimant’s overall purpose and the way in which it fulfills that purpose. In this regard, the Michigan Supreme Court held in *Wexford, supra*, that several factors must be considered in determining whether an entity is a “charitable institution for purposes of 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.

While Petitioner contends that it satisfied all three tests found in *Wexford*, Respondent contends that Petitioner cannot be construed to be a charitable organization because it does not relieve a burden which would otherwise be imposed upon government, and that raising money for benevolent purposes is not enough.

To make this determination, Petitioner’s activities must be analyzed under the *Retirement Homes* test. It is clear that Petitioner’s activities do not bring minds or hearts under the influence of education or religion, do not relieve bodies from disease, suffering or constraint, by assisting people to establish themselves for life, and do not erect or maintain public buildings or works. The question remains whether Petitioner’s activities lessen the burdens of government.

In making this determination, the first question that must be answered is what “burdens of government” are lessened by Petitioner’s activities? Here, Petitioner provided no specific testimony, evidence or argument regarding the governmental burdens it claimed to have lessened through its activities. Instead, the testimony and evidence clearly show that Petitioner’s primary reason for being is as a fraternal organization for police officers, active and retired, and citizen supporters of police officers. Petitioner’s President testified that Petitioner raises money “to make sure that we have enough money to make our mortgage payment; take care of maintenance on the building; maintain the properties and then from the balance of that, our monies go to charities.” He further testified that rentals of the subject property might be for graduation parties, First Communions, birthday parties, retirements, weddings, “just about anything.” The

Tribunal finds that although Petitioner certainly provides numerous charitable efforts, including donations of the property to charitable organizations, conduct of its annual “Shop with a Cop” program, and fundraisers for other charitable organizations, Petitioner’s charitable activities, *taken as a whole*, do not constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons. While Petitioner provides several services or contributions that could be considered charitable gifts, the Tribunal finds that Petitioner’s purposes are primarily for the benefit of its members, and not to provide charitable services. Thus, Petitioner *was neither organized primarily* to provide something to persons in need nor organized to provide for the advancement of education, religion or other traditional object intended, first and foremost, to benefit the community at large. While Petitioner’s charitable activities are laudable and obviously appreciated by the recipients, when all of Petitioner’s activities are taken as a whole, the Tribunal cannot help but find that Petitioner did not prove by a preponderance of the evidence that it qualifies for a property tax exemption under MCL 211.7o.

JUDGMENT

IT IS ORDERED that the subject property is not exempt pursuant to MCL 211.7o.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined

by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, after December 31, 2008 at the rate of 3.315 for calendar year 2009, after December 31, 2009 at the rate of 1.23% for calendar year 2010, and after December 31, 2010 at the rate of 1.12% for calendar year 2011.

This Opinion and Judgment resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: January 24, 2011

By: Steven H. Lasher