

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

Camp Retreats Foundation,
Petitioner,

v

MTT Docket No. 346969

Marathon Township,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

OPINION AND JUDGMENT

This case involves Petitioner's claim that parcel number 013-022-030-00, located in Marathon Township, County of Lapeer, is exempt from ad valorem taxation. Michael J. Gildner, of the firm of Simen Figura & Parker, PLC, represented Respondent. Matthew Hagerty, of the firm Myers and Myers, PLLC, represented Petitioner. The hearing was held on February 7, 2011. Petitioner and Respondent filed "Post-Hearing Briefs" on March 21, 2011. Respondent also filed a "Supplemental Post-Hearing Brief" on March 25, 2011, which enclosed a copy of a Tribunal decision (*Ypsilanti Masonic Association v Charter Township of Ypsilanti*, MTT Docket No. 313921 (May 5, 2010)), with no explanation other than the comment that the case "speaks to many of the arguments at issue in this case."

The Tribunal 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
013-022-030-00	2008	\$968,200	\$484,100	\$484,100
013-022-030-00	2009	\$1,328,200	\$664,100	\$664,100
013-022-030-00	2010	\$1,237,600	\$618,800	\$618,800

PETITIONER’S CONTENTIONS

Petitioner contends that the subject property, which consists of approximately 106 acres of land, and certain land improvements, is exempt from taxation under MCL 211.7o for the 2008, 2009 and 2010 tax years because it is a nonprofit charitable organization exempt from federal taxation under Section 501(c)(2) that owned and occupied the subject real property and used the property solely for the purposes for which it was organized. Further, Petitioner “operates and rents its camp facilities for use by other nonprofit organizations for camps, retreats, and other philanthropic activities . . . ” (Transcript, p. 5), and offers use of the subject facilities “to all persons regardless of race, sex, gender, income or religious affiliation.” (Transcript, p. 7).

PETITIONER’S ADMITTED EXHIBITS

P-1. Covenant Deed dated June 28, 2007 from Tau Beta Association to Camp Retreats Foundation, Inc.

P-2. Quit-Claim Deed dated July 23, 2008 from Camp Retreats Foundation, Inc. to Tawheed Institute, Inc.

P-3. Quit-Claim Deed dated October 14, 2008 from Tawheed Institute, Inc. to Camp Retreats Foundation, Inc.

P-4. Articles of Incorporation for Camp Retreats Foundation, Inc. dated February 6, 2007.

P-5. Correspondence from Internal Revenue Service dated February 11, 2008, granting tax-exempt status to Camp Retreats Foundation, Inc. under section 501(c)(2) of the Internal Revenue Code, as amended, effective February 6, 2007.

P-6. Unsigned 2008 and 2009 IRS Form 990, Return of Organization Exempt from Income Tax, prepared for Camp Retreats Foundation, Inc.

P-7. Articles of Incorporation for Tawheed Institute, Inc. filed February 18, 2009.

P-8. Correspondence from the Internal Revenue Service dated April 7, 2004 granting tax-exempt status to Tawheed Institute, Inc. under Section 501(c)(3) of the Internal Revenue Code, as amended.

P-9. Signed Internal Revenue Service Form 990, Return of Organization Exempt from Income Tax for 2007 for Tawheed Institute, Inc. Unsigned Internal Revenue Service Forms 990, Return of Organization Exempt from Income Tax for 2008 and 2009 for Tawheed Institute, Inc.

P-11. Camp Retreats Foundation Petition to 2008 March Board of Review dated March 19, 2008.

P-12. 2008 Assessment notice issued to Camp Retreats Foundation, Inc.

P-13. Information printed from Tawheed Summer Camp website.

P-14. Correspondence dated March 5, 2004, from David M. Heinowski, Colliers International, to Marathon Township Board of Review.

P-15. Tau Beta Association correspondence to Marathon Township dated March 8, 2004.

P-16. Undated correspondence from Tau Beta Association to Marathon Township.

P-17. Summary of rental agreements with Camp Retreats from the years 2008, 2009 and 2010.

PETITIONER'S WITNESSES

Petitioner presented two witnesses at the hearing. Hassanain Rajabali, a member of the three member board of directors of Camp Retreats Foundation, Inc., testified that (a) “the stated purpose of Camp Retreats Foundation is to receive, administer funds for the purpose of owning, operating and holding title to the property for use as a camping facility.” (Transcript, p. 13); (b) “Camp Retreats Foundation is a title-holding company and it’s registered as a 501(c)(2) by the IRS . . . and the sole purpose of Camp Retreats Foundation is to manage the affairs of the camp as an operating company.” (Transcript, p. 14); (c) Camp Retreats Foundation is “a title-holding company exclusively for nonprofit corporation . . . and has to manage and use the funds strictly for the camp and any additional money that is raised in the operations must be returned to the parent” (Transcript, pp. 14, 48); (d) the subject property was purchased by Petitioner in June, 2007 for \$700,000, using funds provided by Tawheed Institute (Transcript, pp. 19, 27); (e) Tawheed Institute conducts camps “for kids of all varieties in order to help them to become better role models in society.” (Transcript, pp. 20, 35); (f) “. . . Camp Retreats . . . operates the camp . . . and allows all different groups to come in including . . . any groups that want to come and rent the facility, it’s open.” (Transcript, pp. 21, 41); (g) subsequent to its purchase of the subject property, Petitioner “enhanced the facility. Infrastructure wise we added a new septic system, we added new electrical systems, we added a lot more buildings on the property. We added swimming pools, tennis courts, soccer field, basketball courts, and we created basically villages where families can stay.” (Transcript, p. 21); (h) While Tawheed Institute, Petitioner’s parent, operates its own camp, the facility “is open to all different groups.” (Transcript, p. 24); (i) Petitioner “runs the operations of the camp” and employs a caretaker who lives on the property

and “takes care of the facility, he secures it, makes sure that everything, all the gates are closed. He takes care of the grounds, meaning cutting the lawn, making sure that, you know, if we have staff working, you know, he manages the staff.” (Transcript, pp. 25, 26); (j) “Camp Retreats Foundation is funded entirely by Tawheed Institute.” (Transcript, p. 43); (k) although rental fees are charged to users of the facilities (either a flat rate fee or per user fee), the fee may be waived for certain groups, such as the Marathon Township Fire Department and the Rochester Redskins youth football team. (Transcript, p. 46); (l) Petitioner’s focus is “educating the youth in preparing them for being good role models and citizens in a civil society. Keeping them away from drugs, giving them good environments by which to stay away from indecent behaviors . . . healthy living, how to pick good ingredients, healthy life-styles, teach them debating skills, teach them the skill of presentations, those kinds of things. And, of course, athletics, sports. We’re very sports centered” (Transcript, pp. 50, 51); (m) “. . . Tawheed Institute is a Muslim organization . . . when Tawheed runs the camp it has a larger population of Muslims, but the facility is open to all. So we’ve had non-Muslims use it. As long as the facility is being used for a good cause, that’s what the mission is all about. So if other groups come in and they say we’re a Christian group, we’re an atheist group and we want to use the facility . . . as long it’s within the jurisdiction of doing good things . . . it’s definitely promoted.” (Transcript, pp. 51, 137); (n) Petitioner’s Exhibit 17 is a generally comprehensive list of groups or entities that have used the subject facilities during 2008, 2009 and 2010. (Transcript, p 52); (o) Tawheed Institute operates a two-week summer camp(s) at the subject facilities, which is “open to the public and to people of all races, faiths, background, abilities and income levels.” (Transcript, pp. 67, 69, 75); (p) Petitioner operates the subject property for charitable purposes and does not discriminate on the

basis of race, sex, national origin, and religion or income level. (Transcript, pp. 87, 88); (q) for the Tawheed camp, “we don’t have a filtration process to only accept Muslims or to have a certain ratio of non-Muslims to attend the camp. (Transcript, p. 103); (r) the subject facilities are available to any person or group. (Transcript, pp. 134, 135); (s) most groups renting the subject facilities during the 2008 – 2010 period were Muslim or members of the Islamic faith because (i) the facilities were constructed so that separate “villages” are available to boys and girls such that a “conducive environment” is created to “manage the two genders,” and (ii) word of mouth of the availability of the subject facilities was generated through Muslim lines of communication. (Transcript, pp. 136, 137); (t) the subject facilities have been under constant construction since Petitioner’s purchase of the property in 2007, with the boys’ cabins and girls’ cabins completed in 2010 and the dining hall still unfinished. (Transcript, pp. 141, 142).

Gary Sleiman, also a member of the board of directors of Camp Retreats Foundation, Inc., testified that (a) the mission of Camp Retreats is “to inspire confidence and success in our youth, social behavior, co-active. These are things that, you know, that the kids, we feel that there’s a need for the kids to have that.” (Transcript, p. 153); (b) the subject property was determined by Respondent to be exempt from ad valorem taxation when it was owned by its prior owner, Tau Beta. (Transcript, pp. 157 – 159); (c) Petitioner has spent approximately \$2 million on construction at the subject property over the past three to four years. (Transcript, p. 169); (d) As a member of Petitioner’s board, he is unaware of any discrimination on the basis of religion in terms of the operations of Camp Retreats. (Transcript, p. 178).

PETITIONER'S ARGUMENT

Petitioner contends that the subject property is organized as a non-profit corporation to own and operate a camping facility “devoted to philanthropic, non-profit and charitable purposes within the meaning of MCL 211.7o.” (Petitioner’s Brief, p. 2). To this end, Petitioner has, since its purchase of the subject property in 2007, endeavored to improve the property so that Petitioner can “serve a far greater number of groups who utilize the camp facilities and further Camp Retreats’ mission of providing a residential recreational camp facility for children and families of all faiths, backgrounds and walks of life and instill in them core values of kindness, personal responsibility, and good moral character.” (Petitioner’s Brief, p. 2, 3).

Petitioner contends that Respondent has determined that the subject property should not be exempt under MCL 211.7o because of the erroneous belief that Petitioner “makes the Property available *only* to those persons who are members of the Islamic Faith and therefore operates in a discriminatory or exclusionary manner.” (Petitioner’s Brief, p. 4). Further, Petitioner contends that Respondent has denied exemption to Petitioner “based not on *what* charitable services are being conducted on the Property, but by *whom* they are being conducted.” (Petitioner’s Brief, p. 4).

For the subject property to be granted exemption under MCL 211.7o, Petitioner recognizes the three elements that must be satisfied by a preponderance of the evidence, as identified in *Engineering Society of Detroit v City of Detroit*, 308 Mich 539; 14 NW 2d 79 (1944): “the Property must be 1) 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’s Brief, p. 5).

Petitioner recognizes that the central issue with respect to its appeal is whether it satisfies the second element of the test established in *Engineering Society of Detroit*, (i.e., is Petitioner a “nonprofit charitable institution”). As to the issue of ownership and occupation of the subject property, Petitioner believes that it has clearly established that Petitioner is the owner of the subject property for the tax years at issue. Further, Petitioner contends that it satisfies the “occupancy” requirement, as it maintains a “regular physical presence on the property.” (See *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 62; 746 NW2d 782 (2008)), and employs “a year-round, live-in staff person that maintains the Property” (Transcript, pp. 25-26). With respect to the requirement that the property be occupied by Petitioner “solely for the purposes for which it was incorporated,” Petitioner contends that the Tribunal must look not only to the Articles of Incorporation of both Petitioner and its parent, Tawheed Institute, Inc., but also to other governing documents of Petitioner. In this regard, Petitioner contends that its use of the subject property is consistent with the respective stated purposes in their Articles of Incorporation (i.e., to own and operate a camping facility, satisfy the requirements of IRC 501(c)(3), promote the sports and physical activities for young adults and children), and such use is also established through the literature disseminated by Petitioner and by the actual activities taking place at the property. (Petitioner’s Brief, p. 8).

With respect to whether Petitioner is a “nonprofit charitable institution,” Petitioner contends (Petitioner’s Brief, pp. 10 – 15) that it satisfies the factors established by the Michigan

Supreme Court in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006):

(1) a “charitable institution” must be a nonprofit institution. Petitioner was incorporated as a non-profit entity in 2007 and was granted exemption from federal income tax pursuant to Section 501(c)(2) of the Internal Revenue Code, as amended. Further, its parent, Tawheed Institute, Inc. is a non-profit corporation granted exemption from federal income tax pursuant to Section 501(c)(3) of the IRC.

(2) a “charitable institution” is one that is organized chiefly, if not solely, for charity. Petitioner was organized for charitable purposes. Further, “the primary focus of Camp Retreats is on youth education.” (Transcript, pp. 41-46, 50-51).

(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. Petitioner contends that the evidence and testimony presented in this matter clearly demonstrate that Petitioner does not discriminate “based upon religious background,” that it does not deny “anyone from utilizing the facilities at the Property,” and that it “has had as its core purpose to allow other philanthropic groups . . . to rent the Property and it has done so.” Specifically, Petitioner’s witness Rajabali stated that Camp Retreats does not discriminate by choosing who deserves to use the facilities, based upon sex, national origin, religion, income level. (Transcript, pp. 87, 88). Petitioner’s witness Rajabali further testified that Petitioner is inclusive of all groups. (Transcript, pp. 132-140). Petitioner further contends that Petitioner’s “efforts are also

centered upon benefitting the public at large,” (Transcript, pp. 22-24), and “no group was ever turned away from using the property,” (Transcript, pp. 185, 186).

(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. Petitioner contends that it satisfies this factor by providing an “Islamic faith-based camp experience centered on teaching good moral character through various lectures, prayer, promotion of public speaking, engaging in physical fitness activities, sports, field trips, and proper nutrition,” (Petitioner’s Brief, p. 13) and by offering the use of its facilities “for both religious and secular purposes” to a variety of philanthropic and non-profit entities. (Petitioner’s Brief, page 13). Further, Petitioner’s witness Rajabali testified that the subject property “is available to other non-profit, charitable organizations to provide an environment to nurture positive behavior in people of all faiths and backgrounds.” (Transcript, pp. 89, 90). Thus, Petitioner contends that by providing an Islamic faith-based camp experience centered on teaching good moral character, Petitioner “assists people to establish themselves for life and/or brings people’s minds or hearts under the influence of education and religion, which by their nature lessens the burden 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. Petitioner’s witness Rajabali testified that no board of director receives a salary and that Petitioner has not generated a fund surplus through its operations. (Transcript, p. 48). Further, while Petitioner is funded solely by contributions from its parent, Tawheed Institute, Inc., rental fees charged by Tawheed Institute

for the use of the facilities are based only on the funding necessary to perform necessary maintenance of the property and to continue to provide camp services.

(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. Again, Petitioner contends that it “provides the Property to a variety of organizations that meet the core mission of Camp Retreats and its parent organization. Betterment of the community through education, religion, exercise and recreation are all charitable works engaged in on the Property entitling Camp Retreats to a tax exemption.” (Petitioner’s Brief, p. 15).

Finally, Petitioner takes strong exception to the criteria used by Respondent in determining that the subject property is not entitled to exemption under MCL 211.7o. Specifically, Petitioner contends that Respondent, through its agent, Mr. Valentine, has provided no legal authority for its conclusion that “in order to be charitable to the general public, there should be a sign, an indication, some way that the general public can get a sense that this property has an opportunity for them to use it in some fashion.” (Transcript, p. 207). Similarly, Petitioner questions Respondent’s denial of exemption based, in part, on the conclusion of its agent, Mr. Valentine, that “persons that did not engage in an Islamic lifestyle weren’t welcome at the camp or weren’t eligible to use the camp facilities.” (Transcript, p. 217).

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is not exempt from taxation under MCL 211.7o because “its grounds, facilities and services are not advertised or publicized to members of the general public,” “the general public would have no way of knowing that Camp Retreats facilities are open and available,” “there is no fee schedule . . . nor is there any objective criteria used to determine which cause is a ‘good cause’ or whether the applicant has ‘good morals,’” “apart from a few exceptions, all uses share the common thread of being Islamic in nature,” “participants either have a personal connection to the two directors, who are both Muslim, or are tied to Muslim groups or activities,” and, quite simply, “the charitable services that Camp Retreats provides are de minimus compared to its overarching, primary purpose of providing a gathering place for groups or organizations.” (Respondent’s Brief, pp. 1-3, 9).

RESPONDENT'S EXHIBITS

R-1. Tawheed Summer Camp Rules and Regulations.

R-2. Information printed on June 25, 2008 from the Tawheed Summer Camp website.

RESPONDENT'S WITNESSES

Tom Valentine, Assessor and Chairman of the Planning Commission, Marathon Township, testified that (a) the subject property is a 106-acre parcel, fronting on three roads, is mostly wooded, contains a private lake and is improved with temporary residences, a lodge and a dining hall. (Transcript, p. 186); (b) that the subject property should not be exempt from ad valorem taxation. (Transcript, p. 184); (c) that his determination regarding exemption was based on “my visits to the property physically, because of my visits to the posted website and because of my information with the Township in general and reviewing past MTT cases and case law.”

(Transcript, p. 205); (d) “. . . the property is posted no trespassing and private property all the way around it. There are four entrances to the property. Three of them are locked with either solid gates or partial gates . . . it was my feeling that a member of the general public would not know how to access this property, would not take advantage of the facilities there. The general public wouldn’t know how to access it.” (Transcript, p. 206); (e) “In order to be charitable to the general public, there should be a sign, an indication, some way that the general public can get a sense that this property has an opportunity to them for them to use it in some fashion . . . they have to be able to use it in order to qualify to be tax exempt.” (Transcript, p. 207); (f) “. . . the sign out front says Camp Taha. There’s no indication that you would go to a website of Camp Retreats Foundation or there’s no indication you’d go to a website of Tawheed Institute when . . . the only information the general public has is Camp Taha.” (Transcript, p. 207); (g) he is unaware that “anyone else has ever been turned away by Camp Retreats Foundation from using the facilities based upon a particular religious cultural affiliation.” (Transcript, p. 218); (h) “the fact that the Tawheed Camp is a predominately Muslim camp” had nothing to do with his placing the subject property on the assessment roll. (Transcript, p. 222); (i) he does not believe that Camp Retreats Foundation discriminates. (Transcript, p. 224); (j) he relied on *North Ottawa Rod & Gun Club, Inc v Grand Haven Charter Township*, unpublished opinion per curiam of the Court of Appeals, issued August 21, 2007, Docket No. 268308. (Transcript, pp. 225-227).

RESPONDENT’S ARGUMENT

Respondent contends that Petitioner is not exempt from property tax because it fails to satisfy the six factors established by the Michigan Supreme Court in *Wexford, supra*.

Specifically, Respondent argues that Petitioner is not organized for charity, as its stated purpose is “for use as a camping facility.” (Respondent’s Brief, p. 5). Respondent further contends that Petitioner discriminates in determining who can use the subject property. In this regard, Respondent contends that Petitioner’s witnesses testified that they, and they alone, determine whether an applicant has demonstrated “good morals” or “good cause” that would allow access to the subject facilities. Further, Petitioner failed to provide any documents or other evidence that established the standards upon which an applicant is judged. (Respondent’s Brief, p. 5). “Mssrs. Rajabali and Sleiman rely on purely subjective standards for deciding who benefits from Camp Retreats’ facilities.” (Respondent’s Brief, p. 7).

Respondent further contends that the “largest, longest and most intense use” of the subject facilities is the Tawheed Summer Camp. Participation in this camp is “conditioned specifically on observance of Islamic laws and management” and is therefore, discriminatory given Petitioner’s right to screen and refuse registration to those unwilling to sign an agreement to obey Islamic laws. (Respondent’s Brief, p. 7). In addition, Petitioner’s mission statement (Exhibit R-2) outlines “lofty goals, whatever they mean,” but they “do not bring people’s minds or hearts under the influence of education or religion, nor do they relieve people’s bodies from disease, suffering or constraint.” (Respondent’s Brief, p. 8). Petitioner has also not shown that it lessens the burdens of government by providing access to the subject facilities to a small number of groups other than the Tawheed summer camp sponsored by its parent company. Further, most of the groups using the facilities either have a personal connection with Petitioner’s directors, or are tied to Muslim groups or activities. (Respondent’s Brief, p. 8).

Respondent contends that the test for charitable purpose is “whether the petitioner’s primary purpose, **taken as a whole**, is charitable. “ *Bridgeport Gun Club v Bridgeport Township*, MTT Docket No. 346247. “Here, the primary purpose of Camp Retreats is to provide a meeting place and that is not charitable because it is not a burden of government.”

(Respondent’s Brief, p. 8).

Finally, because Petitioner does not have an established fee schedule for the use of the subject facilities, “it is impossible to know if its charges are more than what is needed for Camp Retreats’ successful maintenance.” (Respondent’s Brief, p. 9).

FINDINGS OF FACT

1. The subject property is classified as commercial real property and consists of 106 acres of land improved with temporary residences, a lodge, a dining hall, athletic facilities and various other buildings, located at 5125 Klam Road, Marathon Township, MI 48421.
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
013-022-030-00	2008	\$968,200	\$484,100	\$484,100
013-022-030-00	2009	\$1,328,200	\$664,100	\$664,100
013-022-030-00	2010	\$1,237,600	\$618,800	\$618,800

3. Petitioner is organized as a non-profit corporation under Section 501(c)(2) of the Internal Revenue Code, as amended.
4. Petitioner was incorporated on February 6, 2007.

5. Petitioner received Section 501(c)(2) status from the Internal Revenue Service on February 11, 2008.
6. The purpose for which Petitioner was incorporated is stated in Article II of its Articles of Incorporation dated February 1, 2007 as follows:

“To receive and administer the funds for the purpose of owning, operating and/or holding Title to Property for use as a camping facility.”
7. Petitioner purchased the subject property from Tau Beta Association (which was granted exemption from ad valorem taxation by Respondent during the period the property was owned by Tau Beta Association) on June 28, 2007.
8. The subject property was owned by Petitioner on the December 31, 2007, December 31, 2008 and December 31, 2009 assessment dates.
9. Petitioner operates the subject property and rents its camp facilities for use by other primarily nonprofit organizations for camps, retreats and other philanthropic activities.
10. Petitioner is a wholly owned subsidiary of its parent corporation, the Tawheed Institute, Inc., a Section 501(c)(3) non-profit organization.
11. Petitioner is funded entirely by Tawheed Institute, Inc.
12. The purpose for which Tawheed Institute was incorporated is stated in Article II of its Articles of Incorporation dated February 10, 2009 as follows:

To operate exclusively for the purposes set forth in section 501(c)(3) of the Internal Revenue Code, as amended (‘the Code’), including for purposes of such as making of distribution to organizations that qualify as exempt organizations under Code Section 501(c)(3). Such activities shall specifically include the promotion of athletic sports pastimes dedicated to young adults and children. To take or lease building or lands for purposes of holding matches and promote the sports and physical activities for young adults and children.

13. The Tawheed Institute, a Muslim organization, sponsors the Tawheed Summer Camp, which was held for two weeks in the summers of 2008 and 2009 and for four weeks in the summer of 2010.
14. While it is open to the public and to people of all races and faiths, the Tawheed Summer Camp is generally structured for Muslims.
15. During 2008, the subject facilities were used by the Marathon Fire Department (no fee), for a family wedding (no fee), the University of Michigan (\$300 fee), the Rochester Redskins (no fee), the YMA (\$1,200 fee) and the Tawheed Summer Camp.
16. During 2009, the subject facilities were used by the University of Michigan (\$800 fee), Universal Life (\$3,600 fee) and the Tawheed Summer Camp.
17. During 2010, the subject facilities were used by the Bridge Academy (\$1,000 fee), Flint Girls Group (\$1,200 fee), Universal Life (\$6,000 fee), MYNA (\$11,000 fee), YMFA (\$9,000 fee), Camp Al Hilal (\$10,000) and the Tawheed Summer Camp.
18. Rental fees are charged for use of the subject facilities, although the fee may be waived.
19. There is no published fee schedule.
20. Most groups renting the subject facilities were of the Islamic faith because the facilities are constructed to separate and “manage” the two genders and because the availability of the facilities was generated through word of mouth communications among Muslims.
21. The subject facilities and services are not advertised or publicized to members of the general public, other than certain information contained in the internet sites for Tawheed Institute, Inc. and Camp Retreats Foundation.

22. The subject property is partially fenced and is posted with “no trespassing, private property” signs.
23. Three of the four entrances to the subject property are locked and gated.

ISSUES AND CONCLUSIONS OF LAW

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).)

In this regard, charitable organizations have already 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.

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 applying these tests to Petitioner and the facts of this case, the Tribunal finds it necessary to review the organizational structure of Petitioner and its relationship to its parent, Tawheed Institute, Inc. Specifically, Petitioner is organized under Section 501(c)(2) of the Internal Revenue Code, as amended. A Section 501(c)(2) organization is a “[c]orporation organized for the exclusive purpose of holding title to property, collecting income there from, and turning over the entire amount thereof, less expenses to an organization which itself is exempt under this section” In this case, Petitioner is the wholly owned subsidiary of Tawheed Institute, Inc., a non-profit corporation that has been granted Section 501(c)(3) status by the IRS. In this regard, the IRS requires that the corporate charter of a Section 501(c)(2) organization must confine the purposes and powers of the organization to holding title to property, collecting income from the property and turning the income over to an exempt organization. As a result, if the Tribunal were to only look to the statutory authority for, and the organizational structure of, a Section 501(c)(2) organizations such as Petitioner, then no such organization could ever qualify for the charitable exemption under MCL 211.7o, because of the statutory requirement that the property owner be a non-profit “charitable” institution. The Tribunal can find no authority, statutory or otherwise, that looks at the issue of whether a Section 501(c)(2) organization qualifies for a charitable exemption. The Tribunal finds that any analysis must also include an analysis of the other exempt organization required by Section 501 of the Internal Revenue Code. Thus, the Tribunal will analyze the claim

of exemption made by Petitioner by including evidence and testimony that relates to Tawheed Institute, Inc., a Section 501(c)(3) corporation and the parent of Petitioner.

Is the subject property owned and occupied by Petitioner? If so, is the subject property occupied by Petitioner “solely for the purposes for which it was incorporated?”

In the instant case, it is clear the subject property is owned by Petitioner, Camp Retreats Foundation. However, given that Petitioner’s purpose, as described in its Articles of Incorporation is “to receive and administer the funds for the purpose of owning, operating and/or holding Title to Property for use as a camping facility,” it cannot be easily concluded that Petitioner actually occupies the subject property. Although the by-laws and other operating documents of Petitioner were not submitted into evidence by the parties, Petitioner’s “Mission Statement” was admitted into evidence as a part of Exhibit R-2. Petitioner’s stated mission

is to inspire confidence and success in youth. Through positive social behavior and proactive self-discovery we help create a caring and sharing world. Camp Retreats is a camp management company servicing various camps around the world with well structured organization and programs along with a unique curriculum tailored for each camp to achieve maximum success. . . .

Again, nothing in Petitioner’s “Mission Statement” supports a conclusion that Petitioner “occupies” the subject property as is contemplated by the statute. Instead, its sole purpose is to “hold Title to Property” and to operate and rent “its camp facilities for use by other nonprofit organizations for camps, retreats and other philanthropic activities” (Transcript, p. 5).

The Michigan Supreme Court addressed the “occupancy” issue in *Liberty Hill Housing Corporation v City of Livonia*, 480 Mich 44, 746 NW2d 282 (2008), where it

held that to “occupy” property for purposes of MCL 211.7o, the charitable institution must at a minimum have a regular physical presence on the property. Petitioner contends that the presence of a caretaker residing on the property constitutes a “regular physical presence” on the property, sufficient to satisfy the occupancy requirement. In *Liberty Hill*, the Supreme Court relied on a dictionary definition of occupy, which is defined to mean “be a resident or tenant of; dwell in.” Thus, a petitioner did not occupy property that it leased to others and did not physically reside in. The majority disagreed with the minority position that “occupy” means “use.” Here, similar to the facts in *Liberty Hill*, Petitioner leases the subject property to third party users. Only the presence of a full-time caretaker employed by Petitioner, and possibly the use of the subject property by Petitioner’s parent company to conduct a camp for four weeks during 2010 (two weeks in 2008 and 2009) distinguishes the facts of this case from those of *Liberty Hill*. The Tribunal finds that the presence of a caretaker residing on the subject property minimally satisfies the “occupy” requirement of the first and third tests established in *Wexford*. While the first test in *Wexford* focuses on occupation of the property by the exemption claimant, the third test requires that the property be “occupied” by the claimant solely for the purposes for which it was incorporated. Clearly, Petitioner was formed to own, operate or hold title to property for use as a camping facility. In the instant case, there is no dispute that the subject property is used as a camping facility. Thus, the Tribunal finds that Petitioner occupies the subject property “solely for the purposes for which it was incorporated.”

Is Petitioner a “non profit charitable organization”?

The stipulated facts show that Petitioner is a Michigan non-profit corporation that is exempt from Federal income tax under Section 501(c)(2) of the Internal Revenue Code, as amended. However, an entity’s status under the Internal Revenue Code does not, in and of itself, determine whether a claimant qualifies as a charitable institution under MCL 211.7o. In addressing this issue, the Michigan Court of Appeals held that:

The Institute’s income tax status does not affect or predetermine the taxable status of its property **under** the Michigan general property tax law, as it contends. The institute’s 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. The Institute’s services are principally for its members, which eventually will benefit the public, but are not the kind of services to the general public which were contemplated by the legislative enactment for tax exemption. (*American Concrete Institute v State Tax Commission*, 12 Mich App 595, 605-606; 163 NW2d 508 (1968))

In *Michigan Baptist Homes and Development Company v City of Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976), the Michigan Supreme Court stated that “exempt status requires more than a mere showing that services are provided by a nonprofit corporation.” (*Id.*, p. 670) The Court also stated that to qualify for a charitable or benevolent exemption, the use of the property must “. . . benefit the general public without restriction.” (*Id.*, p. 671)

The first step in determining whether an organization is charitable is to understand the definition of “charity.” In *Retirement Homes v Sylvan Township*, 416 Mich 340; 330 NW2d 682 (1982), the Michigan Supreme Court established the following definition of “charity”:

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.*, p. 348)

To determine whether an organization is charitable, Petitioner must 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. As is recognized by both parties, 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 of the tests found in *Wexford*, Respondent contends that Petitioner cannot be construed to be a charitable organization because 1) it discriminates in determining who can use the subject property, 2) participation in the Tawheed Summer Camp, sponsored by Petitioner’s parent organization, and the primary user of the subject facilities, is conditioned specifically on observance of Islamic laws and management, 3) Petitioner has not established by testimony or exhibits that Petitioner’s purpose is to “bring people’s minds or hearts under the influence of education or religion,” nor do they “relieve people’s bodies from disease, suffering or constraint,” 4) Petitioner has failed to show that it lessens the burdens of government, 5) Petitioner has failed to show whether its charges are more than what is needed for the successful maintenance of the subject facilities.

The Tribunal finds that while Petitioner was organized as a non profit corporation in Michigan, it was not organized for charitable purposes. Instead, as a Section 501(c)(2)

corporation under the Internal Revenue Code, as amended, Petitioner is organized for the exclusive purposes of holding title to property for an organization separately exempt under Section 501 of the Internal Revenue Code. Even when viewed together with its parent corporation, Tawheed Institute, Inc., which was organized as a Section 501(c)(3) corporation to actively include the “promotion of athletic sports pastimes dedicated to young adults and children,” the Tribunal finds that Petitioner is chiefly organized for recreational purposes rather than for charitable purposes.

Further, the Tribunal must determine whether any of the remaining factors established in *Wexford* are not satisfied by the actions of Petitioner during the tax years at issue. Simply, does Petitioner make the subject property available to the general public? Are the “burdens of government” lessened by virtue of the existence of the subject property? Is the fee structure for use of the subject property commensurate with successful maintenance of the facilities? In this regard, the Tribunal generally agrees with Respondent that Petitioner fails to prove, by a preponderance of the evidence, that it satisfies these conditions.

In *Moorland Twp v Ravenna Conservation Club, Inc*, 183 Mich App 451; 455 NW2d 331 (1990), the Michigan Court of Appeals held that “[t]he proper focus . . . is whether the organization’s activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.” The Tribunal finds that Petitioner has failed to provide testimony and evidence sufficient to convince the Tribunal that this standard has been satisfied. Petitioner’s witness Rajabali acknowledged during cross-examination that of a potential 32 weeks annually that the camp facilities are available, the property has only been used for approximately six weeks, with two to four weeks

of use associated with the Tawheed Institute camp. (Transcript, pp. 142-144). Further, other users of the camp facilities during the tax years at issue have, for the most part, either been Muslim organizations, or organizations represented by Muslim individuals. As Petitioner's witness Rajabali also acknowledged (Transcript, p. 137), the availability of the subject facilities was generally communicated by word of mouth among the Muslim community. Further, Petitioner does not advertise or otherwise publicize the availability of the subject camp facilities other than its web site information about the Tawheed Institute camp. Simply, the testimony and evidence support a conclusion that the camp facilities are focused on use and participation by the Muslim community. Construction of the camp facilities has focused on "separate villages" for boys and girls, brochures and rules and regulations for the Tawheed Institute camp emphasize Islamic law, and no substantive effort has been made by Petitioner to publicize or make available to the general public information regarding the availability of the subject facilities. Further, the testimony and evidence reveal that Petitioner has established no specific fee schedule, nor has it established specific rules and regulations regarding use of the subject facilities. Instead, decisions regarding use of the camp facilities are made by Mr. Rajabali and Mr. Sleiman based, in part, on whether the user satisfies certain "guidelines of good morals and good standards." (Transcript, pp. 89, 90).

In *Michigan Wildlife and Forest Preservation Foundation v Dover Township*, unpublished opinion of the Court of Appeals, issued June 25, 1999, Docket No. 209573, the Court held that where the property was enclosed by a fence and access was controlled by several gates, and "no trespassing" signs were posted around the edge of the property, and the use of the property was limited, the Tribunal was correct in determining that the use of the property was not

for the benefit of the general public without restriction or for an indefinite number of persons. Similarly, testimony in this case has established that at least portions of the subject property are fenced and gated, that “No Trespassing, Private Property” signs are posted on the property, and that there exists no clear indication to the general public that the subject property is available.

As to the question regarding whether Petitioner’s activities lessen the burdens of government, 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 existence is to hold title to property for its parent company, whose stated purpose is the “promotion of athletic sports pastimes dedicated to young adults and children.” The Tribunal finds that conducting two, two-week camps for primarily Muslim population coupled with a very few other users, both Muslim and otherwise, of the camp facilities, does not “lessen the burdens of government” as contemplated by the Michigan Court of Appeals.

When taken as a whole for the tax years at issue in this case, all of Petitioner’s activities do not provide by a preponderance of the evidence that its activities constitute a charitable gift for the benefit of the general public or for the benefit of an indefinite number of persons. Given the testimony of Petitioner’s witnesses that Petitioner plans to further improve the camp facilities and advertise its availability to the general public, the Tribunal could reach a different conclusion under a different fact situation in future years. Petitioner contends that it has endeavored to improve the property so that Petitioner can “serve a far greater number of groups who utilize the camp facilities.” While this is a noble goal, the Tribunal finds that for the tax years at issue, Petitioner has failed in that goal. The facts of this case do not support Petitioner’s contention

that the camp facility is open and available to the general public, and thus, do not support Petitioner's contention that the subject property should be exempt from ad valorem taxation pursuant to MCL 211.7o for the 2008, 2009 and 2010 tax years.

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 28 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: May 3, 2011

By: Steven H. Lasher