

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

Star International Academy,
Petitioner,

v

MTT Docket No. 383246

City of Dearborn Heights,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

This case involves Petitioner's claim that parcel number 82-33-020-02-0078-301, located in the City of Dearborn Heights, is exempt from real property ad valorem taxation for tax years 2010 - 2012. Gregory Elliott, attorney, represented Petitioner, Star International Academy. Derk Beckerleg, attorney, represented Respondent, City of Dearborn Heights. The hearing of this matter was held on September 26, 2012.

The subject property consists of an 11,747 square foot building situated on 1.9 acres of land. The building is owned by Star International Academy, a Public School Academy formed under MCL 380.501-507. The academy provides schooling for children in preschool through grade twelve. The property is located at 6919 Waverly, Dearborn Heights, Michigan. Petitioner alleges that the property

is entitled to an exemption from property taxation under MCL 211.7n as an educational institution or under MCL 380.503(9) as property owned by a public school academy. Petitioner also contends that the property might be properly taxed to the user of the property under MCL 211.181(1). Respondent contends that the subject property is not exempt from property taxation under MCL 211.7n or MCL 380.503(9), or as a tax exempt property made available to, and utilized by, a for-profit corporation under MCL 211.181(1).

Petitioner's witnesses were Nawal Hamadeh, Superintendent, CEO and founder of Star International Academy, and Amal Beydoun, personnel director of Star International Academy. Respondent's witness was Barb McDermott, City of Dearborn Heights assessor.

SUMMARY OF JUDGMENT

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner has proven by a preponderance of the evidence that the subject property is exempt from taxation, pursuant to MCL 380.503(9). As such, the property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) is as follows:

Parcel Number: 82-33-020-02-0078-301

Year	TCV	SEV	TV
2010	\$0	\$0	\$0
2011	\$0	\$0	\$0
2012	\$0	\$0	\$0

PETITIONER'S EXHIBITS AND WITNESSES

Petitioner's Admitted Exhibits

P-1 Corporate records of Star International Academy, to include, by way of illustration but not limitation, Articles of Incorporation and Bylaws

P-2 Applications for Property Tax Exemption

P-3 Denials of Property Tax Exemption

Petitioner's Witnesses:

Nawal Hamadeh

Nawal Hamadeh was the first witness called by Petitioner's attorney and she testified that she is the founder, Superintendent and CEO of Star International Academy ("Star"). (Transcript, p. 14) The parties agreed that Star is a Public School Academy. (Transcript, p. 11) Mrs. Hamadeh testified that she also founded an educational management company called Hamadeh Educational Services ("HES"). She indicated that HES provides complete educational management services to four public school academies: Star International Academy,

Universal Academy, Universal Learning Academy, and Noor International Academy. (Transcript, pp. 12-13)

Mrs. Hamedeh testified that the subject property is utilized by employees of HES to provide services to the four public school academies that she refers to as sister schools, under a state mandated collaborative agreement. No employees in the building were employed by Star, they were all HES employees during the 2010-2012 tax years. (Transcript, pp. 72-73) Mrs. Hamedeh testified that the subject property is used as an office building and that no teaching of preschool to grade twelve students occurred there. (Transcript, p. 34)

The services provided by HES include management, payroll, and other administrative functions. (Transcript, p. 39) Mrs. Hamedeh testified:

The academies have needs for staffing. We [HES] hire staffing for them and the staffing does the work for them. So that's how services are provided....For example, the school needs a principal....someone to handle accounts payable, the school needs someone to handle discipline, the schools need teachers, so we provide the staff to do those services for the academies. (Transcript, pp. 40-41)

Mrs. Hamedeh was questioned on cross-examination regarding the profit earned by HES from providing the services mentioned above:

Q. So to provide these services that you've spoken about for the schools, whether it's hiring or actually directly providing them, HES makes a profit; correct?

A. Yes.

Q. And it was making a profit as of the relevant tax dates; right?

A. Yes.
(Transcript, pp. 44-45)

Mrs. Hamedeh further testified that on December 31, 2009, a small portion (150-161 square feet) of the subject property was occupied by Michigan Wellness Center, a for-profit chiropractic practice owned by her son. She testified that Michigan Wellness vacated the subject property in January, 2010. (Transcript, pp. 30-31, P-4)

Amal Beydoun

Amal Beydoun was Petitioner's second witness. Ms. Beydoun testified that she is the Director of Human Resources for HES. She testified that she "oversees recruitment, hiring, personnel, professional development, as well as making sure that staff qualifications are in compliance with the requirements of the state." She testified that she is employed by HES. (Transcript, p. 84)

RESPONDENT'S EXHIBITS AND WITNESSES

Respondent's Admitted Exhibits

R-1 Department of Labor and Economic Growth ("DLEG") Corporate Details regarding Hamedeh Educational Services

R-2 City of Dearborn Heights Sign Permit with back-up date

R-12 DLEG – Bureau of Commercial Services, Corporation Division – Profit
Corporation Information Updates

R-13 Business Card of Ismail Bachir

R-14 September 14, 2010, notes regarding inspection of the property under appeal

R-16 Arab American News Article – Innovative Educator Nawal Hamedeh: A
pillar of the Arab American community

Respondent's Witness:

Barbara McDermott

Ms. McDermott testified that she is the assessor for the City of Dearborn Heights. (Transcript, p. 86) She testified that the owner of the subject property is Star International Academy and it purchased the property on August 11, 2009. Ms. McDermott obtained the ownership information from the property transfer affidavit affiliated with the sale. Ms. McDermott testified that she inspected the subject property on December 14, 2009, September 14, 2010, and July, 2011. (Transcript, p. 95) She did a walkthrough of the property and determined that it was a typical office building on all three visits, other than there was a chiropractic bed she viewed on the 2009 visit, which was absent on the subsequent visits. (Transcript, pp. 96, 98-99)

Ms. McDermott testified that she received applications for exemption from real property taxes from Star, which she rejected as she determined that the property was not owned and occupied by Star, but rather, was owned by Star and occupied by HES. She testified that she observed on her walkthroughs that the property was not being utilized as a school or for classroom activities, but was being used as the business office of HES. (Transcript, pp. 100-101, 108)

Ms. McDermott was questioned as to whether she determined that the subject property was exempt from property taxation under MCL 380.503 (relating to public school academies). She answered in the negative reiterating that “the property is not occupied by the school.” (Transcript, p. 120)

FINDINGS OF FACT

1. The subject property is located at 6919 Waverly, Dearborn Heights, Michigan.
2. Its property identification number is 82-33-020-02-0078-301.
3. The subject property consists of an 11,747 square foot building situated on 1.9 acres of land.
4. The building is owned by Star International Academy, a Public School Academy formed under MCL 380.501-507.
5. Nawal Hamedeh is the founder, Superintendent and CEO of Star International Academy.

6. Nawal Hamedeh is also the founder of Hamedeh Educational Services, Inc. (“HES”) a for-profit corporation that provides educational management services to Star International Academy.
7. The subject property is occupied by employees of HES in order to provide management services to Star International Academy, as well as its sister schools, Universal Academy, Universal Learning Academy, and Noor International Academy.
8. No employees of Star International Academy occupy the subject property.
9. No instruction of children is provided on the site of the subject property.
10. In 2009, a small portion of the subject property was occupied by Michigan Wellness, a for-profit chiropractic business.

ARGUMENTS OF THE PARTIES, ISSUES, AND CONCLUSIONS OF LAW

Petitioner contends that the property is entitled to an exemption from property taxation under MCL 211.7n as an educational institution or under MCL 380.503(9) as property owned by a public school academy. Petitioner also contends that the property might be properly taxed to the user of the property under MCL 211.181(1). Respondent contends that the subject property is not exempt from property taxation under MCL 211.7n or MCL 380.503(9), or as a tax exempt

property made available to, and utilized by, a for-profit corporation under MCL 211.181(1).

Is the subject property exempt from property taxation under MCL 211.7n?

The subject property is not exempt from property taxation under MCL 211.7n (1980 P.A. 142) In short, the statute provides an exemption from taxation to the real property owned and occupied by a qualified educational institution.

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 of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Township, Washtenaw County*, 416 Mich 340, 348-349; 330 NW2d 682 (1982), *APCOA, Inc v Dep’t of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995).

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.*, pp. 494-495.

Petitioner asserts that the subject property is exempt from taxation because Petitioner is an educational institution under MCL 211.7n. Educational institutions have already been recognized as exempt classes. Because Petitioner is attempting to establish membership in that class, the preponderance of evidence standard applies.

MCL 211.7n states, in relevant part:

Real estate or personal property **owned and occupied** by nonprofit theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon while **occupied** by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act. (Emphasis added).

In order to qualify for an exemption as an educational institution under MCL 211.7n, Petitioner must meet three criteria:

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

Grosse Pointe Academy v Township of Grosse Pointe, unpublished opinion per curiam of the Court of Appeals, decided November 2, 2004 (Docket No. 248340), citing *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944). With regard to educational exemption criteria one and three, above: the parties agree that the property is owned by Star, but not that it is occupied by Star.

There is no question that the subject property is owned by Star International Academy. Ms. McDermott confirmed the same from the Property Transfer Affidavit received by her office at the time of sale. (Transcript, p. 93) Star is also listed as the property owner on the City's property record cards and neither party suggests that anyone else could own the subject property. Mrs. Hamedah, founder, CEO and Superintendent of Star, testified that the subject property is utilized by employees of HES to provide administrative services to Star and its sister schools. Mrs. Hamedeh testified that the services provided by HES include management, payroll, and other administrative functions (Transcript, p. 39) and that no

¹ The requirement that the claimant be incorporated under Michigan law is no longer valid, having been found to be unconstitutional as it denied equal protection to institutions registered out-of-state. *OCLC Online Computer Library Center, Inc v City of Battle Creek*, 224 Mich App 608, 612; 569 NW2d 676 (1997), citing *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp*, 186 Mich App 511, 515; 465 NW2d 14 (1990).

employees in the building were employed by Star. (Transcript, pp. 72-73) Mrs. Hamedeh testified that the subject property is used as an office building and that no teaching of preschool to grade twelve students occurred there. (Transcript, p. 34)

The Tribunal finds that the subject property is owned by Star, but is not occupied by Star under MCL 211.7n. The subject property is the property of a public school academy and public school academies, by law, may be managed by for-profit business corporations under MCL 380.503c. The parties agree that Star is managed by HES, a for-profit corporation (R-1, Department of Energy, Labor and Economic Growth, Corporate Entity Detail lists Hamedeh Educational Services, Inc. as a Domestic Profit Corporation). There were ten to thirteen HES employees during the tax years in question assigned to work in the subject property building performing administrative functions. (Transcript, pp. 47-48) The Tribunal finds the performance of these administrative functions to be part of managing an educational institution, the business of HES. Hiring teachers for Star is part of managing an educational institution, providing staff to complete payroll is part of managing an educational institution, assuring its compliance with state requirements is part of managing an educational institution. In fact, Petitioner argues in its post-hearing brief that “since the management company **really has no other business to do besides run public school academies** should provide some

reassurance that the facts could not be other than as represented.” (Petitioner’s Post-Hearing Brief, p. 6; emphasis added).

There is no question that the for-profit management of public schools academies was occurring in the subject property during the relevant tax years. The Tribunal reiterates Mrs. Hamedeh’s testimony:

Q. So to provide these services that you’ve spoken about for the schools, whether it’s hiring or actually directly providing them, HES makes a profit; correct?

A. Yes.

Q. And it was making a profit as of the relevant tax dates; right?

A. Yes.
(Transcript, pp. 44-45).

The Tribunal reiterates that it finds that the subject property is owned by Star, but not occupied by Star. The property therefore does not meet the requirements of MCL 211.7n to be owned and occupied by an educational institution order to qualify for an educational exemption from property taxation for the tax years in question.

Is the subject property exempt from property taxation under MCL 380.503(9)?

The subject property **is exempt** from ad valorem property taxation under MCL 380.503(9) for the tax years in question. As stated above, there is no question that Star is a public school academy (“PSA”). Both parties agree that Star is a PSA (Transcript, pp. 11, 118) and Star’s Articles of Incorporation, filed with the Department of Labor and Economic Growth in 2007 and with the Department of Licensing and Regulatory Affairs in 2012, confirm its status as a PSA. (P-1)

The law applying to the exemption from property taxation of the property of a PSA is different than the law regarding the exemption from property taxation of the property of a non PSA educational institution. The PSA law is different in that for exemption, there **is an ownership** requirement, but **not an occupancy** requirement.

MCL 380.501- MCL 380.517 (1993 P.A. 362) of the Revised School Code **applies specifically** to public school academies. MCL 380.503(9) clearly states: “**A public school academy is exempt from all taxation on its earnings and property.**” (Emphasis added) In other words, in order to qualify for an exemption from ad valorem property taxation, a PSA must own the property. **There is no requirement that a PSA occupy the property.**

Respondent contends that the subject property is not exempt from taxation under MCL 380.503(9) as Star does not occupy the property. Respondent states in its post-hearing brief that, “[t]he second [sic] sentence in MCL 380.503(9) requires that before property such as the Subject Property is exempt from real property taxes, it must be ‘occupied’ by a public school academy and used exclusively for educational purposes.” (Respondent’s Post Trial Brief, p. 22) Indeed at first glance it may appear that there is an occupancy requirement in a scenario such as the one before us required under MCL 380.503(9). However, a careful reading and detailed analysis of the legislative intent of the public act clearly demonstrates that the occupancy requirement applies to property occupied by a public school academy (and used exclusively for educational purposes), but owned by a nonexempt owner. The third sentence of 380.503(9) states in part:

. . . property **occupied by a public school academy and used exclusively for educational purposes is exempt from real and personal property taxes** levied for school operating purposes under section 1211, to the extent exempted under that section, and from real and personal property taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906. A public school academy may not levy ad valorem property taxes or another tax for any purpose. However, operation of 1 or more public school academies by a school district or intermediate school district does not affect the ability of the school district or intermediate school district to levy ad valorem property taxes or another tax. (Emphasis added)

Respondent contends that the language quoted above demonstrates that in order to be exempt, the property of a PSA must be “occupied by a PSA and used exclusively for educational purposes.” In order to understand the true meaning of the statute, one has to read further:

. . . property occupied by a public school academy and used exclusively for educational purposes is **exempt from real and personal property taxes levied for school operating purposes under section 1211, to the extent exempted under that section, and from real and personal property taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.** A public school academy may not levy ad valorem property taxes or another tax for any purpose. However, operation of 1 or more public school academies by a school district or intermediate school district does not affect the ability of the school district or intermediate school district to levy ad valorem property taxes or another tax. (Emphasis added)

The section in bold of MCL 380.503(9) above indicates that property occupied by a PSA and used exclusively for educational purposes is **exempt from the six mill state education tax and the eighteen mill school operating tax.** What the statute is stating is if a PSA is occupying and using exclusively for educational purposes, **the property of a nonexempt owner, the nonexempt owner receives a partial exemption from property taxation** (SET and State Operating taxes). Query, why would the legislature state that the property of a PSA is exempt from taxation and then go on to indicate it is exempt from the state education tax and school

operating tax, only? It should also be noted that under MCL 380.503(9), the property of a PSA is exempt from the real estate transfer tax under MCL 207.501 to 207.513 and also exempt if it is the property of an exempt organization leased, loaned, or made available to a PSA pursuant to MCL 211.7z.²

Besides a careful reading of the statute cited above, an analysis of the legislative history of MCL 380.503(9) confirms the Tribunal's interpretation of the same.

Senate Bill 618, which was passed by the Senate on October 6, 2011, added the following language to the already existing statute related to public school academies (“**A public school academy is exempt from all taxation on its earnings and property**”): “Property occupied by a public school academy and used exclusively for educational purposes is exempt from real and personal

² MCL 380.503(9) states: A public school academy is exempt from all taxation on its earnings and property. **Instruments of conveyance to or from a public school academy are exempt from all taxation including taxes imposed by 1966 PA 134, MCL 207.501 to 207.513. Unless the property is already fully exempt from real and personal property taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155,** property occupied by a public school academy and used exclusively for educational purposes is exempt from real and personal property taxes levied for school operating purposes under section 1211, to the extent exempted under that section, and from real and personal property taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906. A public school academy may not levy ad valorem property taxes or another tax for any purpose. However, operation of 1 or more public school academies by a school district or intermediate school district does not affect the ability of the school district or intermediate school district to levy ad valorem property taxes or another tax.

property taxes.” The State of Michigan House proposed additional clarifying language to Senate Bill 618 on December 14, 2011:

Unless the property is already fully exempt from real and personal property taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, property **occupied by a public school academy and used exclusively for educational purposes** is exempt from real and personal property taxes **levied for school operating purposes under section 1211, to the extent exempted under that section, and from real and personal property taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.** (Emphasis added)

The State of Michigan Senate concurred with the House additions on December 15, 2011; therefore Senate Bill 618 became Public Act 277 on December 20, 2011.

The Tribunal concurs with the House Committee legislative analyses of Bill 618, dated October 11, 2011, and December 7, 2011, stating (the legislative analysis refers to charter schools which are synonymous with public school academies):

The bill exempts property occupied by charter schools from real and personal property taxes levied under the six-mill State Education Tax. **The act currently exempts charter schools from all taxation on property that it owns.** Moreover, the General Property Tax Act generally provides a limited exemption for property (1) leased, loaned, or otherwise made available to a school district or other state-supported or nonprofit educational institution (including charter schools) (2) which would have been exempt from ad valorem taxation

if it had been occupied by its owner solely for the purposes for which it was incorporated, while (3) it is used by the school district or other state-supported education institution. **The bill essentially expands the existing property tax exemptions, as it relates to charter schools, contained in the Revised School Code and the General Property Tax Act to exempt property occupied by a charter school but owned by a nonexempt owner** (such as a private individual or a for-profit corporation) from the SET. The bill would reduce School Aid Fund revenue by exempting such property from the 6-mill state education tax. In addition to SET taxes, the bill would also exempt property occupied by a PSA from the 18 school operating mills. The property exemption would also reduce revenue from local school operating taxes, which reduces the local portion of the foundation allowance, thereby increasing State School Aid Fund expenditures (the state's portion) in order to maintain per-pupil foundation allowances paid to school districts. (Charter school and public school academy are synonymous.)

The Tribunal reiterates that it finds that under MCL 380.503(9), the property **of a public school academy is exempt from all taxation on its property.** The only requirement for exemption from ad valorem property taxation that the legislature provided, under MCL 380.503(9), is that the property be **owned** by a PSA.

Is tax owed pursuant to MCL 211.181(1)?

Petitioner in the matter before us is Star International Academy. The Tribunal has found that the subject real property owned by Star International Academy is exempt from ad valorem taxation under MCL 380.503(9). Both

parties to this action put forth the argument that MCL 211.181(1) may apply to this matter. If the Tribunal determines that MCL 211.181 (1) applies to the matter at hand, the Petitioner in this matter would not be liable for the tax. Therefore, the Tribunal declines to address whether MCL 211.181(1) is applicable to this matter.

For the reasons stated above, the Tribunal finds that the subject property is not exempt from real property taxation under MCL 211.7n. Petitioner did prove, however, by a preponderance of the evidence that the subject property, as the property of a public school academy, is exempt from ad valorem property taxation under MCL 380.503(9), for the 2010-2012 tax years.

JUDGMENT

IT IS ORDERED that the subject property is EXEMPT from taxation under MCL 380.503(9).

IT IS FUTHER ORDERED that the property's assessed and taxable values for the tax year at issue shall be as set forth in the *Summary of Judgment* section of this Final Opinion and Judgment.

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, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (iv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (v) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (vi) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (vii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012 and (viii) after June 30, 2012 and prior to January 1, 2013, at the rate of 4.25%.

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

MICHIGAN TAX TRIBUNAL

Entered: December 06, 2012 By: Preeti Gadola