

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

Hope Network-Rehabilitation Services,
Petitioner,

v

MTT Docket No. 412553

City of Kentwood,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Hope Network-Rehabilitation Services, appeals the denial of a charitable exemption for the subject property under MCL 211.7o for the 2010, 2011, and 2012 tax years. A hearing was held on May 17, 2013. Robert F. Rhoades, attorney at Dickinson Wright PLLC, appeared on behalf of Petitioner, and Crystal L. Morgan, attorney at Bloom Slugget Morgan, P.C., appeared on behalf of Respondent. Witnesses on behalf of Petitioner are Denise Marie Osborne, Supervisor at Forest Glen Facility, (subject property) and Shane Kistler, Business Director for Hope Network-Rehabilitation Services. Respondent presented no witnesses.

Background and Introduction

The issue to be determined by the Tribunal is whether the subject property is entitled to a charitable exemption from ad valorem taxation under MCL 211.7o for the 2010, 2011, and 2012 tax years.

The subject property, also known as Forest Glen, is located at 4222 Burton Street SE, in the City of Kentwood, and is identified as parcel no. 41-18-12-101-058. Petitioner acquired the subject property in 2007 and began operations, following construction, in 2009. The subject property is a 6,024 square foot, six-bedroom adult foster care facility. Petitioner provides specialized residential services to adults and children, 16 years of age and older, needing rehabilitation from traumatic brain and spinal cord injuries and other disabling conditions. Petitioner has served 12 residents since it began operations at the subject property in 2009.

The Tribunal finds that the subject property is not entitled to a charitable exemption under MCL 211.7o for the 2010, 2011, and 2012 tax years.

Petitioner's Arguments

Petitioner believes that the subject property should be exempt from ad valorem taxation under MCL 211.7o for the tax years at issue.

Petitioner's admitted exhibits:

- P-3 Hope Network's Articles of Incorporation, as Restated.
- P-10 Funding Authorization.
- P-11 Scholarship Application.
- P-12 Write-off Reports.
- P-14 Charities Review Council Standards.

In addition, the parties stipulated to the admission of the following exhibits:

- S-1. Property Record Cards.
- S-2. Restated Articles of Incorporation dated September 29, 2006.
- S-3. February 6, 2004 IRS Letter confirming §501(c)(3) status.
- S-4. November 4, 2009 Correspondence.
- S-5. Demographic Information.
- S-6. HNRS Forest Glen AFC Licensure Information and Licensing Study Report.

Petitioner's first witness was Denise Osborne, a certified brain injury specialist and supervisor at the subject property. She testified that they try to make the residents' lives as regular as possible. The facility is staffed with two people during the day, two people for the second shift, and one person for the third shift.

The residents' rooms are set up to encourage independence and safety.

The residents are not able to drive and require transportation to outside

appointments, dinners, concerts, and off-site therapy. Staff provides transportation.

Osborne explained that she has no knowledge of whether services are covered by insurance or not. When a resident makes a request, staff does it regardless.

The employees give back to residents by contributing to a payroll deducted GAP fund. The GAP fund can be used for extracurricular activities that a resident's guardian may not be able to cover. A request is made, and a check is issued.

Osborne is not familiar with the accounting and billing for services. She believes that there are fees that are included with the daily living costs of the subject property. There are services, however, that the residents are billed for, but the financial arrangements are through Petitioner. Petitioner has other entities, with various departments that include their own manager that schedules physical therapy, occupational therapy, and recreational therapy are not located at the subject property, as well as bill individually

for the outside services. Osborne does not know what, if fees any, are charged for those outside services.

Osborne testified that she is not involved with the business management or accounting. However, she is aware of S-4, a November 4, 2009 letter from Karen Ohlrich, Facilities Coordinator of Hope Network Leadership Center, to Deborah Ring, Respondent's Assessor, indicating that fees or rates charged at Forest Glen are \$300 to \$340 a week.

Petitioner's next witness was Shane Kistler, Business Director for Petitioner. Kistler testified that Petitioner is a Michigan nonprofit and charitable 501(c)(3) corporation, with one member, Hope Network, also a 501(c)(3) nonprofit corporation, but stated that the subject property does not fulfill all of Petitioner's purposes as stated in its Restated Articles of Incorporation. Mr. Kistler stated that the subject property is a specialized facility and is only used by Petitioner. He stated that Petitioner does not discriminate in providing services at the subject property.

The difference in earnings for a nonprofit and for profit earnings was explained by Kistler. Earnings in the nonprofit world are an excess of

revenues over expenses, the costs. The earnings cannot inure to any person or group as capital gains or dividends. Profit corporations can return the profits in the form of dividends to the shareholders of the corporation, however, charitable organizations hold earnings in excess of expenses in reserves for a rainy-day fund. The subject property has unrestricted reserves for approximately 11 months. Kistler testified that this is common.

Kistler stated that he approves scholarships. The balances are written-off from scholarship-program recipients. Scholarships are for residents that do not have funding. The scholarships are treated as a write-off. There are no scholarships at the subject property.

When questioned if there is an actual scholarship fund, Kistler answered, "There's not. There's not a separate pool of dollars or a bank account associated with scholarship funds." Tr p 134. The fees are just written-off for noncovered services.

Kistler minimally discussed the GAP program; however, the funds are not corporate donations.

Kistler was not able to determine what the income and expenses were for just the subject property. Hope Network Rehabilitation Services does not consider whether an individual entity meets its expenses, it is inconsequential. All of the fees received from its entities aren't more than what is necessary to sustain Petitioner as whole. Any expense over the actual cost is put into the reserve fund.

Kistler agreed that the income source for the subject property is auto insurance, as it is in all of Petitioner's facilities. He testified:

And we have some security provided by Hope Network Rehabilitation Services in the form of write-offs for things that were not paid for by auto insurance. We're not paid for those directly.

So there are certain services that the auto insurance at the particular location would not pay for, and we found it necessary to provide those services to those consumers, so we provided the service and took a charitable write-off. TR p 128.

The residents at Forest Glen are considered outpatients of Sojourners.

Services rendered at Sojourners include recreational, physical, occupational, and vocational therapy, psychology, and speech language pathology. The services at Sojourners are billed separately to the insurance

provider. When a service is not covered by insurance, it is automatically a write-off.

Kistler testified that the write-offs for Forest Glen from 2004 to 2009 were about \$75,000. Tr. P 98.

Respondent's Arguments

Respondent disputes whether the property on which the exemption is claimed is being devoted to charitable purposes. It does not dispute that Petitioner may own or operate other facilities that may qualify or receive an exemption under MCL 211.7o. However, an exemption requires more than an affiliation with a nonprofit organization to be exempt.

Respondent urges the Tribunal to focus on the circumstances surrounding the specific property at issue rather than the other charitable activities of the organization. The documents and testimony indicate that Petitioner offers services at Forest Glen to benefit its paying customers. All of the residents at the subject property (Forest Glen) are covered by auto insurance.

Respondent argued that the write-offs do not rise to the level of charity to be considered a gift. The write-offs occurring at the subject property should not be considered charitable. No scholarships have been provided. The services that are not paid in full by the insurance provider are the outpatient services of another facility, Sojourners.

Respondent did not call any witnesses.

Tribunal's Findings of Fact

The parties provided a Joint Stipulation of Facts and Exhibits; the Tribunal finds the following to be relevant:

1. The subject property is located at 4222 Burton Street SE in the City of Kentwood, and is identified as permanent parcel number 41-18-12-101-058.
2. The Subject Property was at all times relevant to this appeal classified as commercial real property (201) and owned by Petitioner, Hope Network Rehabilitation Services ("Petitioner").
3. The values on the tax roll for the tax years at issue are as follows:

Tax Year	True Cash Value	Assessed Value	Taxable Value
2010	\$635,200	\$317,600	\$317,600
2011	\$582,000	\$291,000	\$291,000
2012	\$543,800	\$271,900	\$271,900

4. The issue in this case is whether the Subject Property is exempt from ad valorem property taxes under MCL 211.7o for the tax years at issue, which

are 2010, 2011, and 2012. Petitioner does not claim that Respondent's assessment does not represent the true cash value of the Subject Property for the tax years at issue.

5. As of each relevant tax day, Petitioner was a nonprofit corporation organized under the Michigan Nonprofit Corporation Act.

6. Article II of Petitioner's Restated Articles of Incorporation states as follows: "The primary mission of the Corporation is to: Enhance the dignity and independence of persons who have a disability and/or are disadvantaged...."

7. Petitioner provides specialized neuro-rehabilitation services to adults and children recovering from brain injury, spinal cord injury, and other disabling conditions.

8. Petitioner's core list of services, which are provided to varying degrees at various facilities, include:

- a. Transitional Inpatient Rehabilitation,
- b. Neurobehavioral Inpatient Rehabilitation,
- c. Child and Adolescent Rehabilitation,
- d. Occupational Therapy,
- e. Physical Therapy,
- f. Speech-Language Pathology,
- g. Therapeutic Recreation,
- h. Psychology,
- i. Social Work,
- j. Neuropsychological Evaluations,
- k. Psychiatry and Psychiatry,
- l. Residential Services,
- m. Day Enrichment Programs, and
- n. Vocational Rehabilitation.

9. Petitioner began operations at the Subject Property before December 31, 2009.

10. The structure on the Subject Property consists of a 6,024-square-foot barrier-free building with six (6) individual bedrooms, each with its own

bathroom and shower, communal dining and living areas, a large kitchen and laundry area and two office areas.

11. At the Subject Property, Petitioner provides supervision, protection, and personal care to up to six (6) male or female adults whose diagnosis is developmentally disabled, mentally impaired, or traumatically brain injured. As of each relevant tax day, the Subject Property was used for providing specialized residential services to individuals needing rehabilitation primarily from traumatic brain injury and/or spinal cord injury.

12. The Subject Property is staffed 24/7 by two or three employees who assist the residents with basic needs, prepare or help prepare meals, assist with laundry and try to encourage independent living as much as possible.

13. Since December 31, 2009, the Subject Property has operated between 95-100% occupancy.

14. Since opening in 2009, the Subject Property has had a maximum capacity of six (6) residents and has served a total of 12 residents.

16. The parties stipulate that Petitioner was incorporated as a nonprofit institution and that it is exempt from federal taxes as a nonprofit entity.

17. The parties have not stipulated that Petitioner is organized chiefly, if not solely, for charity.

18. The parties have not stipulated that Petitioner does not offer its charity on a discriminatory basis.

19. The parties stipulate that the services offered by Petitioner at the Subject Property relieve people's bodies from disease, suffering, or constraint, assists residents to establish themselves for life, or otherwise lessens the burdens of government.

20. The parties have not stipulated that Petitioner does not charge more than what is needed for its successful maintenance.

21. The parties have not stipulated that the overall nature of the institution is charitable.

Applicable Law

Petitioner contends that the subject property is entitled to an exemption under MCL 211.7o. A petitioner must establish its entitlement to exemption by a preponderance of the evidence, see *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002), and “tax-exemption statutes are strictly construed in favor of the taxing unit.” *Inter Co-op Council v Dep’t of Treasury*, 257 Mich App 219, 222; 668 NW2d 181 (2003).

MCL 211.7o(1) provides, “Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.” The Michigan Supreme Court in *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 50; 746 NW2d 282 (2008), stated:

As a consequence of the statutory requirements, courts should consider three factors when determining whether the tax exemption under MCL 211.7o(1) applies:

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

Medical Group v Cadillac, 474 Mich 192, 203; 713 NW2d 734 (2006)] [Emphasis included.]

In determining whether an institution is a “charitable institution” for purposes of MCL 211.7o, as required by the second prong in *Liberty Hill Housing Corp*, the Michigan Supreme Court, in *Wexford Medical Group*, supra at 215, looked to the following factors as guidance:

- (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.

In *Retirement Homes v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982), the Michigan Supreme Court established the following definition of “charity”:

“[C]harity * * * [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.” [Emphasis removed.]

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 has concluded that an institution’s activities as a whole must be examined. See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 737 (1985), which held that “[t]he proper focus in this case is whether [petitioner’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.]

Also, Petitioner alleges that it is entitled to an exemption from real property tax due to its status as a 501(c)(3) organization exempt from federal taxation. However, the Michigan standard for exemption is more rigorous

than the federal standard. The fact that a petitioner may qualify for tax exempt status under Federal law, i.e., Section 501(C)(3) of the Internal Revenue Code, creates no presumption in favor of an exemption from property taxes. See *Ladies Literary Club v Grand Rapids*, 409 Mich 748;298 NW2nd 422 (1980). See also *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968), which states, “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.”

Conclusions of Law

The Tribunal must determine if the subject property is entitled to a charitable exemption for the tax years at issue based on applicable statutes and case law.

The Tribunal is not going to elaborate on the issues that the parties have stipulated to but is rather going to concentrate on the areas of disagreement. The area of disagreement is the “charity” that Petitioner contends that it provides through write-offs and offering of scholarships

(albeit that none were provided for the subject property) and Respondent's questioning of how a write-off is considered charitable.

In considering whether the subject property should be considered a "charitable institution" for purposes of determining an exemption from property taxes, the *Wexford Medical Group* factors were considered.

Tribunal finds that Petitioner has satisfied the factor that it occupies the subject property solely for the purposes for which it was incorporated.

Kistler testified, when questioned, that Forest Glen does not solely fulfill all of Petitioner's purposes as stated in Stipulated Exhibit 2 (Restated Articles of Incorporation). Forest Glen is a specialized facility that is used together with Hope Network-Rehabilitation Services to fulfill the purposes. The subject property is only used by Petitioner, and the testimony and evidence provided substantiates that Petitioner occupied the subject property, during the tax years at issue, to provide specialized residential services to adults and children, 16 years of age and older, needing rehabilitation from traumatic brain and spinal cord injuries and other disabling conditions, which parallels Petitioner's "primary mission".

The Tribunal must determine whether Petitioner is a nonprofit charitable institution for purposes of MCL 211.7o. In that regard, taking into consideration the parties' stipulation to the factors one or four in *Wexford Medical Group, supra*, the Tribunal finds that Petitioner has failed to prove, by a preponderance of the evidence, that it has satisfied all of the factors i.e., (organized chiefly for charity, serves any person who needs the particular type of charity being offered, the charges are not more than what is needed for its successful maintenance, and the overall nature of the institution is charitable).

Wexford Medical Group states that a "charitable institution" is one that is organized chiefly, if not solely, for charity. Although the Tribunal finds, and the parties stipulated, that Petitioner is organized as a nonprofit corporation, the Tribunal finds that the subject property is not used for charitable purposes. While the Michigan Court of Appeals has explicitly stated in *McLaren Regional Medical Ctr v Owosso*, 275 Mich App 401, 411; 738 NW2d 777 (2007), that "medical services . . . meet the definition of 'charity' . . .," the Michigan Supreme Court has also held that "[a] 'gift' is defined as 'something given voluntarily without payment in return'"

Sands Appliance Services, Inc v Wilson, 463 Mich 231, 241; 615 NW2d 241 (2000).

Kistler testified that all of the services provided by Petitioner at the subject property are offered to residents regardless of a resident's ability to pay, and testimony and evidence was provided showing that Petitioner has a scholarship program available to those who need financial assistance. However, Kistler further testified that there have been no scholarship recipients at the subject property since it opened in 2009, and "the sole funding source has been auto insurance." Tr, p 128. As such, Petitioner has provided no "gifts" (i.e., charity) for purposes of MCL 211.7o since the subject property began operations in 2009 because Petitioner has always been able to recoup payment, whether in part or in full, in return for the services it has rendered at the subject property. Furthermore, although Petitioner argues that its write-offs, for what insurance companies or governmental agencies do not cover, constitute charity, the Tribunal disagrees.

In *Healthlink Medical Transportation Services, Inc v City of Taylor*, 15 MTTR 129, 139 (Docket No. 275821, July 1, 2003), affirmed by the Court of

Appeals, see *Healthlink Medical Transportation Services, Inc v City of Taylor*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2005 (Docket No. 249969), the Tribunal stated:

[C]haritable care does not include bad debt. A bad debt expense is an accounting term of art that represents the unpaid obligation for care provided to patients who have been determined to be able to pay, but have not demonstrated a willingness to do so. This debt accounts for any unpaid patient responsibility that may include, but is not limited to, deductibles, co-insurance, co-payments and non-covered services.

Although merely persuasive, other jurisdictions have likewise held, in cases involving charitable exemptions from real property taxation, that “writing off a bad debt is not tantamount to providing charity.” *Alivio Medical Center v Illinois Dep’t of Revenue*, 299 Ill App 3d 647, 652; 702 NE2d 189 (1998); see also *Riverside Medical Ctr v Dep’t of Revenue*, 342 Ill App 3d 603, 610; 795 NE2d 361 (2003), wherein the Illinois Court of Appeals further stated that “discounts [to patients insured by large insurers] are not Charitable....” As stated by the Illinois Court of Appeals in *Provena Covenant Medical Ctr v Dep’t of Revenue*, 384 Ill App 3d 734, 762; 894 NE2d 452 (2008), “[i]f an organization could acquire a tax exemption for giving up on collecting [money owned to it], nearly every business . . . would be tax-exempt.”

The third factor in *Wexford* asks whether Petitioner offers its charity (i.e., services) on a discriminatory basis. The Tribunal has already found that Petitioner's "write-offs" do not amount to any type of charity during the tax years at issue for purposes of MCL 211.7o; therefore, it is not necessary to address this factor.

Fourth, a charitable institution can charge for its services as long as the charges are not more than what is needed for its successful maintenance. Again, the Tribunal has found that Petitioner is not a charitable institution; therefore, it is not necessary to further address this factor.

The last factor states that 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. For the reasons as discussed above, the Tribunal finds that no charitable activities were provided by Petitioner at the subject property during the tax years at issue for purposes of MCL 211.7o. Petitioner's admission that there is no funded scholarship as such; however, if there were a need to provide a service that was not covered under auto insurance; Petitioner would provide the service, and

then write-off the charges. The Tribunal cannot justify how an unfunded scholarship fund is charitable, or in Petitioner's specific instance, how charges that are unpaid by the insurance company and written-off are a charitable act. If it were, all of the health care professions would have charitable contributions by writing off unpaid balances between fees charged for services rendered and the amount reimbursed by insurance companies. This Tribunal remains unconvinced that charity, as defined by Petitioner in this instance, is the correct definition. The act of writing off unreimbursed charges does not appear on the surface to be charitable. Petitioner's unfunded scholarship that, after a service is not covered, is then written-off is also not an act of charity. It is a business practice decision. Forest Glen is a six-bed adult foster care facility and is not exempt from property taxes based upon the testimony, evidence, and case law.

The Tribunal finds that Petitioner has failed to prove, by a preponderance of the evidence, that the subject property Forest Glen, is a charitable institution with respect to the subject property (i.e., that it offered charitable services at the subject property) under the second test in *Liberty Hill Housing Corp*, and as such, the Tribunal finds that the subject property is

not entitled to a charitable exemption under MCL 211.7o for the 2010, 2011, and 2012 tax years.

Judgment

IT IS ORDERED that the subject property is not exempt from ad valorem taxation pursuant to MCL 211.7o for the 2010, 2011, and 2012 tax years.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's charitable exemption for the tax years at issue as provided in this Final Opinion and Judgment within 20 days of entry 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 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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, (and iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

MICHIGAN TAX TRIBUNAL

By: Victoria L. Enyart

Entered: July 03, 2013