

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

Inner City Christian Federation,
Petitioner,

v

MTT Docket No. 416349

City of Grand Rapids,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

This case involves Petitioner's claim that the subject property, parcel number 41-14-31-106-027, is exempt from real property ad valorem taxation, including the portion of the subject that is leased to Livingwell House Ministries.¹ The tax years at issue are 2011 and 2012. Scott W. Kramer of the firm Kuiper Orlebke, PC, attorney, represented Petitioner. Ta-Tanisha Manson, Assistant City Attorney, represented Respondent. The hearing was held on July 24, 2013.

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 211.7o. As such, the subject property's taxable values for the tax years at issue are as follows:

Parcel Number: 41-14-31-106-027

Tax year	Taxable Value
2011	exempt
2012	exempt

¹ Livingwell House Ministries was founded in 2009 and the name was legally changed to New Vintage Bible Church in April 2012. (Transcript, p. 7-8).

PETITIONER’S CONTENTIONS

Petitioner contends that it owns and occupies the property “in furtherance of Petitioner’s charitable purposes, and the property remains exempt from tax pursuant to MCL 211.7o(1).” Petitioner’s Closing Written Statement, p. 1. In addition, Petitioner states that the remaining portion of the subject is rented to a nonprofit charitable institution which entitles it to a full exemption under MCL 211.7o(3).

Petitioner claims that the only issue in the matter is whether the lessee, New Vintage Bible Church (formerly known as Livingwell House Ministries), is a charitable institution. Petitioner states that New Vintage Bible Church is a nonprofit organization that is organized chiefly for charity, offers free support on a non-discriminatory basis, and seeks to bring people’s minds or hearts under the influence of religion.

PETITIONER’S ADMITTED EXHIBITS

- P-1 Livingwell House Ministries’ Meeting Minutes from April 2011
- P-2 Certificate of Amendment to Articles of Incorporation
- P-3 IRS Determination of 501(c)(3) tax exempt status

PETITIONER’S WITNESSES

Mark Leech

Mark Leech, the lead pastor at New Vintage Bible Church² was Petitioner’s first witness. Pastor Leech testified that the Church obtained 501(c)(3) status under the Internal Revenue Code in 2009. (Transcript, p. 8) In addition, he stated that the Church began leasing property from Petitioner in October 2010 and continued to

² Formerly Livingwell House Ministries (See Footnote 1). This organization is subsequently referred to as the “Church” or the “Tenant.”

occupy approximately 70 percent of the subject property in all of 2011 and 2012. (Transcript, p. 15-16).

Pastor Leech testified that the mission of the Church was “to know God and to make Him known” and that the purpose of the Church is to advance religion. (Transcript, p. 17). The Church provided “[h]ot meals, marriage counseling and financial counseling” as well as “healthcare items primarily for new mothers and newborn young children” during 2011 and 2012.³ (Transcript, p. 19). The Church has members but does not discriminate as it offers its services and support to both members and non-members. (Transcript, p. 23). In fact, the majority of services provided by the Church are to non-members.⁴ He also testified that the Church, when moving to the subject property, had about 15 members and 40 to 60 individuals attending Sunday services. The Church has grown and has approximately 20 members and that approximately 80 to 100 individuals attend the Sunday services. (See Transcript, pp. 41, 46).

Scott Engerson

Petitioner called Scott Engerson, City Assessor for Respondent, as an adverse witness. Mr. Engerson testified that there is no dispute regarding Petitioner’s status as a charitable institution and that Petitioner occupies a portion of the subject property. (Transcript, p. 72). He stated that the dispute is regarding the exemption for the leased portion of the subject property under MCL 211.7o(3), because this section does not specifically include houses of worship. (Transcript, p.

³ Pastor Leach stated that, during 2011 and 2012, the Church provided over 2,000 hours of family or marriage counseling, 30 to 40 hours of financial counseling, and at least 200 hot meals. (Transcript, p. 20 to 22).

⁴ Pastor Leach testified that he estimates that 80 to 90 percent of the services offered by the Church are to non-members. (Transcript, p. 24).

72-73). Mr. Engerson also testified that if Petitioner occupied the entire space, Petitioner would have retained its exemption, “[a]ssuming that [Petitioner] used [the subject] for [its] exempt purpose. . . .” (Transcript, p. 74).

Jonathan Bradford

Jonathan Bradford, the President and CEO of Inner City Christian Federation, testified that Petitioner filed for a real estate property tax exemption for the tax years at issue. He stated that Petitioner is still receiving a 30 percent exemption for the portion of the property that Petitioner occupies. Respondent denied the remaining 70 percent. (Transcript, p. 77). Mr. Bradford further testified that Petitioner sought a tenant that would be consistent with Petitioner’s mission statement. Specifically, he stated that Petitioner “got to know the church we saw in their vision and in their calling a tremendous consistency with [Petitioner’s] mission statement. . . . [Petitioner] felt [leasing to the Church was] productive, effective, consistent with our own hopes for the area.” (Transcript, p. 82-83).

RESPONDENT’S ARGUMENTS

Respondent contends that 70 percent of the subject property was leased out from October 2011 through 2012. Respondent contends that Livingwell House Ministries is a church, not a nonprofit, “registered in the State of Michigan as an Ecclesiastical Corporation.” Respondent’s Post Hearing Brief, p. 2. Respondent contends that a House of Worship is not a nonprofit charitable institution as defined under MCL 211.7o(1). Specifically, Respondent indicates that the church’s governance provides that the church’s purpose is ““To Know God And Make Him Known;”” however, “there is no mention of serving the community, providing counseling, etc., in the document that actually governs the church.” *Id.* at 6.

Respondent indicates that the ruling in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), provides the key question to be addressed in this case. “Respondent does not argue that the church doesn’t provide any services to its members and/or seekers; however, Respondent argues that these services are ancillary to the church’s primary purpose which is clearly to know God and make him known.” Respondent’s Post Hearing Brief, p. 7. Further, Respondent contends that the legislature clearly did not include houses of public worship in MCL 211.7o(3). Thus, “[i]t is clear . . . that [the] legislature did not intend for churches such as Livingwell House Ministries, an ecclesiastical organization that doesn’t dispute that it is a church, to be included as an entity that a nonprofit charitable institution can lease its property to and still maintain its tax exempt status.” Respondent’s Post Hearing Brief, p. 8.

RESPONDENT’S EXHIBITS

- R-2 Application for Exemption of Real and/or Personal Property
- R-5 Livingwell House Ministries’ Articles of Incorporation

RESPONDENT’S WITNESSES

Respondent did not call any witnesses at the hearing on this matter.

FINDINGS OF FACT

1. The subject property is classified as commercial real property.
2. Petitioner is a charitable organization exempt from taxation under MCL 211.7o.
3. Petitioner leases approximately 70 percent of the subject property to New Vintage Bible Church (formerly known as Livingwell House Ministries).
4. The Church is exempt under the Internal Revenue Code as a 501(c)(3) nonprofit organization and was organized under Michigan law as an ecclesiastical corporation.

5. The Church provides counseling and hot meals for anyone and healthcare items primarily for new mothers and newborn young children including formula, diapers and groceries, on a regular basis, to both members and non-members without discrimination.
6. The Church does not charge for its charitable services.

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, Inc v Sylvan Twp*, 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). 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 NW2d 118 (1996).)

In the instant case, Petitioner asserts that the subject property is exempt from property taxation because Petitioner is a charitable organization under MCL 211.7o and that its tenant, New Vintage Bible Church (formerly known as Livingwell House Ministries), is also a charitable organization. As such, Petitioner contends it is eligible for a full exemption, including the leased portion of the subject, under MCL 211.7o(3).

MCL 211.7o reads, in pertinent part: “[r]eal 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.” There is no dispute that Petitioner is a charitable institution and that the portion owned and occupied by Petitioner is exempt under this section. The dispute is regarding the portion of the subject property leased to the Church. MCL 211.7o(3) states that:

Real or personal property owned by a nonprofit charitable institution . . . that is leased . . . to another nonprofit charitable institution . . . that is occupied by that nonprofit charitable institution . . . solely for the purposes for which that nonprofit charitable institution . . . was organized or established and that would be exempt from taxes collected under this act if the real or personal property were occupied by the lessor nonprofit charitable institution . . . solely for the purposes for which the lessor charitable nonprofit institution was organized . . . is exempt from the collection of taxes under this act.

As indicated above there is no dispute that Petitioner, the lessor, is a nonprofit charitable institution and that if Petitioner occupied the property solely for the purposes for which it was organized, it would receive a full exemption. The issues are, therefore, whether the property is leased to another nonprofit charitable institution and whether that nonprofit charitable institution uses the property solely for the purposes for which it was organized.

The meaning of “charitable institution” is not legislatively defined and as such has been developed in case law. In *Retirement Homes, supra*, the Michigan Supreme Court set forth the following definition of “charity:”

[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 the 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 the government*. *Id.* at 348-349 (Emphasis in original).

Further, the proper focus in determining if an organization is a charitable institution 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." *Michigan United Conservation Clubs v Lansing Twp* ("MUCC"), 423 Mich 661, 673; 378 NW2d 737 (1985).

Given the above, the Tribunal must examine whether the Church meets the case law defined definition of "charitable institution" in order to determine if Petitioner is entitled to an exemption for the remainder of the subject property under MCL 211.7o(3). The Church's status as a 501(c)(3) nonprofit organization does not conclusively establish that it is a nonprofit charitable institution. In *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 605-606; 163 NW2d 508 (1968), the Michigan Court of Appeals held:

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 qualifications as an organization exempt from income tax under section 501(c)(3) of the internal revenue code of 1954, but by 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.

Whether the Church is a charitable institution is a fact-specific question that requires examining the overall purpose of the organization and the way in which it fulfills that purpose. *Wexford, supra*, has set forth factors to be evaluated in determining eligibility. These factors are:

- (1) A "charitable institution" must be a nonprofit institution.

- (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
- (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
- (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year. *Id.* at 215.

With regard to the first factor, Petitioner has submitted documentation demonstrating that the Church is a 501(c)(3) nonprofit organization, which alone is not conclusive that it is a nonprofit charitable institution. See P-3. In addition, Respondent submitted the Church's Articles of Incorporation and attachments including "The Livingwell House Governance." See R-5. The original Articles indicate that the Church was incorporated as a Michigan Ecclesiastical Corporation under the Michigan General Corporation Act, 1931 PA 327. See R-5. Petitioner also submitted, as a rebuttal exhibit, the Church's Certificate of Amendment to the Articles of Incorporation which also were filed as a Michigan Ecclesiastical Corporation under the Michigan General Corporation Act, 1931 PA 327. See P-2. The Amendment includes an attachment which states:

This corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code. This Corporation shall be a nonprofit corporation. The specific purpose for which this corporation is organized is . . . to promote Christ-centered, holistic well-being in spirit, mind, and body. P-2, at 4

The Tribunal finds that the Church's Articles do support a finding that it is a nonprofit institution. With regard to determining if the Church is a nonprofit charitable institution, the Tribunal must look to section 7 of the General Property Tax Act, MCL 211.7 – MCL 211.7ss, as held by the court in *American Concrete, supra*. Petitioner contends that it is a nonprofit charitable institution under MCL 211.7o.

With regard to factors two and three of *Wexford, supra*, one indication in determining if the Church was organized for charity and to determine that it does not offer its charity on a discriminatory basis, is again an examination of the Articles of Incorporation. The Livingwell House Governance, an attachment to the original Articles, indicates that the purpose of the church is “To Know God And Make Him Known” and that “[m]inistry shall be available to **seekers** and believers in all age groups. . . .” R-5, p. 5. (Emphasis added) Thus, the Articles give reference to charitable and nondiscriminatory work as supported by the testimony of Pastor Mark Leech. Pastor Leech testified on cross examination that the term “seekers” is in reference to non-members and also testified to the services the Church provides to members and non-members alike. See Transcript, p. 52. In fact 80-90% of the services offered by the Church are to non-members. (Transcript, p. 24) He further testified that the Church provides counseling and hot meals for anyone and healthcare items primarily for new mothers and newborn young

children including formula, diapers and groceries, on a regular basis. (Transcript, p. 19) The Church provides its services, free of charge, to those who need it and the services are not conditional upon hearing the message of God. Specifically, Pastor Leech testified that even if the individual did not want to hear anything about God that “[i]t wouldn’t matter. Until they stop breathing we will provide for them.” Transcript, p. 59

Respondent contends that the legislature specifically omitted “houses of public worship” from MCL 211.7o(3) (“houses of public worship” are exempt from taxation under MCL 211.7s) and that due to the tenant’s religious nature it cannot be organized chiefly for charity. In *Asher Student Foundation v City of East Lansing*, 88 Mich App 568; 278 NW2d 675 (1979), the Court held that “Michigan has recognized that the advancement of religion may come within the definition of ‘charity.’” *Id* at 572. In addition, in *Reorganized Church of Jesus Christ of Latter Day Saints v East Lansing*, MTT Docket No. 277851 (April 3, 2002), the Tribunal held that a corporation that “was organized under the State of Missouri for religious and charitable purposes . . . is not a bar to asserting a claim” for an exemption under MCL 211.7o.⁵ These cases also held that to qualify for a charitable exemption the organization must, in addition to the advancement of religion, confer a benefit upon society in general. These cases support a finding that a religious organization, including houses of worship, is not barred from receiving an exemption under MCL 211.7o. Again, the key, as concluded by the Michigan Supreme Court, is that an institution’s activities as a whole must also be examined when determining if an organization’s activities are a charitable gift. See

⁵ The Tribunal indicated that the organization did not need to be incorporated under Michigan laws to be eligible for an exemption. The organization in that case was organized for both *religious* and charitable purposes and was found to be exempt under both MCL 211.7o and 211.7s.

MUCC, supra. As the testimony indicates, the Church provides many services which can be considered a gift or benefit upon society. Specifically, the Church provides counseling, meals, diapers, formula, and groceries to its members and non-members on a regular basis. Thus, the Tribunal finds that the second and third factors are met.

There is no dispute on record that the Church is a house of worship that provides church services. Pastor Leech testified to the worship services provided by the Church. It is clear that the Church brings people's minds or hearts under the influence of religion and that factor four of *Wexford, supra*, is met. There also appears to be no dispute that the Church does not charge for its services or if it does, that the charges do not exceed what is necessary for successful maintenance. Further, there is no threshold to meet with regard to the amount of charity, therefore factors five and six are met. As indicated above, the services provided by the Church indicate that the overall nature of the organization is charitable.

Thus, the Tribunal finds that the Church is a charitable institution as defined by case law. The leased portion of subject property is occupied for the charitable purpose, and as such, the leased portion of the subject complies with the requirements set forth in MCL 211.7o(3). Therefore, Petitioner shall receive a full exemption under MCL 211.7o for the 2011 and 2012 tax years.

JUDGMENT

IT IS ORDERED that the subject property shall receive a 100% exemption pursuant to MCL 211.7o.

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 qualified agricultural 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 FOJ. 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, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%.

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

By: Preeti Gadola

Entered: September 09, 2013