

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

Evangel Association of Churches & Ministries,
Petitioner,

v

MTT Docket No. 417139

City of Roseville,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER GRANTING PETITIONER'S
MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed its petition, initiating the above-captioned appeal, on May 31, 2011. Petitioner appeals parcel numbers 08-14-16-381-020 and 08-14-16-381-035 alleging that these parcels are exempt from ad valorem taxation under MCL 211.7s for the 2011 and 2012 tax years. On October 30, 2012, Petitioner filed a Motion for Summary Disposition, under MCR 2.116(C)(10), contending that there are no genuine issues of material fact regarding whether the subject property is exempt from taxation as a parsonage. Respondent did not file a response to the Motion.

The Tribunal has reviewed the Motion and supporting documentation and finds that granting Petitioner's Motion, under MCR 2.116(C)(10), is appropriate.

PETITIONER'S CONTENTIONS

Petitioner contends that it owns the subject properties and also states that Reverend Opal McCowin, an ordained minister of Petitioner, occupied 19302 Antonio since March 2009 and Reverend Jan Johnson, also an ordained minister of Petitioner has occupied 19208 Antonio since August 2010. Petitioner contends that both ministers work for Petitioner, a 501(c)(3) organization. Petitioner states that "Respondent cannot refute that the subject property is owned by the church. The Respondent cannot refute that Rev. Opal McCowin is the resident of the house at 19302 Antonio and Rev. Jan Johnson is the resident of the house at 19208 Antonio. The Respondent cannot refute that Rev. Opal McCowin and Rev. Jan Johnson are ordained ministers for the church."

Petitioner submitted the affidavit of Dr. Sherill Piscopo, who testified the following: (1) Petitioner is incorporated as an Ecclesiastical Corporation in the State of Michigan and is a 501(c)(3) organization, (2) Reverend Opal McGowin is an ordained minister and her position for Petitioner is to minister to the elderly, (3) Reverend Opal McGowin has resided at 19302 Antonio since March 2009, (4) Reverend Jan Johnson is an ordained minister who teaches in the Bible college at Petitioner, and (5) Reverend Jan Johnson has resided at 19208 Antonio since August 2010. Petitioner also submitted a copy of the warranty deed conveying

19302 Antonio to Petitioner on December 27, 2006, and a copy of a warranty deed conveying 19208 Antonio to Petitioner on March 21, 2008.

FINDINGS OF FACT

Petitioner is an Ecclesiastical Corporation in the State of Michigan and is recognized as a 501(c)(3) exempt corporation by the Internal Revenue Service. Based on Petitioner's purpose, as indicated in its Articles of Incorporation, Petitioner is a religious society.

The subject properties, parcel numbers 08-14-16-381-020 and 08-14-16-381-035, are located at 19208 Antonio and 19302 Antonio, in the City of Roseville, and are owned by Petitioner. Reverend Opal McCowin is an ordained minister and a minister to the elderly of the Evangel Association of Churches & Ministries. Reverend McCowin resides at 19302 Antonio and has since March 2009. Reverend Jan Johnson is also an ordained minister and has resided at 19208 Antonio since August 2010. Reverend Johnson teaches at Petitioner's Bible college.

APPLICABLE LAW

There is no specific tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of

Court in rendering a decision on such motions. TTR 111(4). In the instant case, Petitioner moved for summary disposition under MCR 2.116(C)(10).

Petitioner moves for summary disposition under MCR 2.116(C)(10). MCR 2.116(C)(10) provides the following ground upon which a summary disposition motion may be based: “Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” The Michigan Supreme Court, in *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996), provided the following explanation of MCR 2.116(C)(10):

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact

exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. (*Id.*, pp361-363) (Citations omitted.)

The Tribunal’s “. . . task is to review the evidence and all reasonable inferences from it and determine whether a genuine issue of any material fact exists to warrant a trial.” *Muskegon Area Rental Assoc v City of Muskegon*, 244 Mich App 45, 50; 624 NW2d 496 (2000), rev'd in part on other grounds 465 Mich 456; 636 NW2d 751 (2001). “Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.” *Taylor v Laban*, 241 Mich App 449, 452; 616 NW2d 229 (2000). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14, 18; 469 NW2d 436 (1991).

CONCLUSIONS OF LAW

The Tribunal finds that granting Petitioner’s motion, under MCR 2.116(C)(10), is warranted, based on the pleadings, affidavit, and other documentary evidence filed with the Tribunal. The Tribunal further finds that the evidence supports Petitioner’s contention that the subject properties are parsonages and are entitled to an exemption from ad valorem property taxes under MCL

211.7s.

As an initial matter, Respondent's response to Petitioner's Motion was filed beyond the 21-day deadline, as enumerated in TTR 230, and is not properly pending before the Tribunal. As such, the response shall not be taken into consideration in the rendering of this decision. See *Pars Ice Cream Company, Inc v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued June 28, 2012 (Docket No. 305148).

It is well settled that a petitioner seeking a tax exemption bears the burden of proving, by a preponderance of the evidence, 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), 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.

Here, the relevant analysis is of MCL 211.7s; this statute states that:

Houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and any parsonage owned by a religious society of this state and occupied as a parsonage are exempt from taxation under this act. Houses of public worship includes buildings or other facilities owned by a religious society and used predominantly for religious services or for teaching the religious

truths and beliefs of the society.

In *St. John's Evangelical Lutheran Church v City of Bay City*, 144 Mich App 616; 319 NW2d 378 (1982), the Court of Appeals held that “. . . the parsonage exemption applies to a residence of the pastor or his assistants who are ordained teaching ministers for a particular congregation.” The *St. John's* Court “. . . agrees with the definition in *St. Matthew Church*. . .,” which concluded that the exemption applies to any church-owned house occupied by a minister ordained in that church. *St. Matthew Lutheran Church v Delhi Twp*, 76 Mich App 597; 257 NW2d 183 (1977).

Here, no issues of fact remain outstanding as Petitioner has submitted sufficient documentation to substantiate its claim of entitlement to an exemption under MCL 211.7s for both subject properties. Specifically, there is no question that Petitioner owns the subject property; Petitioner submitted a copy of the warranty deeds evidencing its ownership interest in the subject properties prior to the tax years in question. For purposes of property tax exemption, an association or organization qualifies as a “religious society” if its predominant purpose and practice include teaching religious truths and beliefs. See *Institute in Basic Life Principles, Inc v Watersmeet Township*, 217 Mich App 7; 551 NW2d 199 (1996). According to Petitioner's Articles of Incorporation, Petitioner's purpose is:

To promote the Gospel of Jesus Christ as revealed in the Christian Bible:

1. To interest people in giving their life to Jesus Christ; 2. To help Christians receive the Baptism in the Holy Ghost with speaking in tongues; 3. To help Christians live a converted and fruitful life according to Christian principles as revealed in the Bible; 4. To help the needy in the name of Jesus Christ.

As evidenced by Petitioner's purpose, Petitioner is a religious society. There is also no question as to whether the subject property was occupied by a minister ordained in the church. The subject properties residents, Reverend McCowin and Reverend Johnson, are ordained ministers of the Evangel Association of Churches & Ministries in Roseville, MI. This fact is proven through exhibits five and six, which are copies of Certificates of Ordination for both Reverend McCowin and Reverend Johnson. Finally, the evidence further shows that both Reverend McCowin and Reverend Johnson resided in the respective subject properties prior to the tax date at issue and continue to reside there through the present day.

Petitioner has proven, by a preponderance of the evidence, that the subject properties are parsonages and are, therefore, exempt from taxation under MCL 211.7s. As a result, the subject properties shall be granted an exemption of 100% for the 2011 and 2012 tax years. The subject properties taxable values (TV) for the tax years at issue shall be as follows:

Parcel Number: 08-14-16-381-020

Year	TV
2011	\$0
2012	\$0

Parcel Number: 08-14-16-381-035

Year	TV
2011	\$0
2012	\$0

Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition is GRANTED.

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 true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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 and prior to January 1, 2013, at the rate of 4.25%.

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

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By: Kimbal R. Smith III

Entered: December 06, 2012