

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

Self Realization Meditation Healing Centre,
Petitioner,

v

MTT Docket No. 436970

Bath Township,
Respondent.

Tribunal Judge Presiding:
Preeti P. Gadola

ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER’S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

This case involves Petitioner’s claim that parcel number 19-010-022-200-060-00, located in Bath Township, is exempt from real property ad valorem taxation for tax years 2012 and 2013. Petitioner, Self Realization Meditation Healing Centre (“the Centre”), filed its petition, initiating the above-captioned appeal, on May 29, 2012. The petition indicates that this matter involves issues relating to the March 2012 Board of Review’s denial of an exemption from property taxation for the subject property under MCL 211.7o and/or MCL 211.7s.

On January 16, 2014, Both Petitioner and Respondent filed Motions for Summary Disposition under MCR 2.116(C)(10). On February 6, 2014, both Petitioner and Respondent filed responses to the Motions. On February 18, 2014, the Tribunal heard Oral Arguments on the parties’ motions. Christina Thompson, Attorney and Alyssa Worden, Law Student, MSU College

of Law Tax Clinic, represented Petitioner. Ross Bower and Steve Koski, Attorneys, Fahey Schultz Burzych Rhodes PLC, represented Respondent.

The parties further requested the Tribunal add tax year 2014 to this appeal pursuant to MCL 205.737(5)(a) which states:

[I]f the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year for **which an assessment has been established** shall be added automatically to the petition. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from the appeal at the time of the hearing on the petition. [Emphasis added].

The 2014 assessment for the subject property has not yet been established. The Board of Review in Bath Township has not yet met; therefore, the assessment roll has not yet been finalized and the Tribunal does not have jurisdiction over the 2014 tax year appeal.

It should also be noted that Petitioner's Brief in Support of its Motion for Summary Disposition, ("Petitioner's Brief") it states under its argument section that "[t]he Centre qualifies for the real and **personal** property tax exemption granted to charitable institutions under MCL 211.7o." [Emphasis added]. A similar allegation is reflected for the religious exemption from taxation under MCL 211.7s. The Tribunal finds that it does not have jurisdiction over Petitioner's personal property appeal. The Petition, filed May 29, 2012, does not state that Petitioner is appealing its personal property assessment and no parcel number or amount in contention was given for any personal property. As such, Petitioner's personal property appeal was not plead and is not included in this appeal.

The Tribunal has reviewed the Motions, responses, and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition and denying Petitioner's Motion for Summary Disposition is warranted at this time.

RESPONDENT'S CONTENTIONS

In its Brief in Support of its Motion for Summary Disposition (“Respondent’s Brief”), Respondent states that “[t]his case has already been decided in the Township’s favor by this Tribunal, the Court of Appeals, and the Supreme Court.” Respondent’s Brief at 2. “This matter was previously before the Tribunal relating to tax years 2007, 2008 and 2009. *Self Realization Meditation Healing Centre v. Bath Township*; MTT Docket No. 338925 (March 18, 2010).”

Respondent’s Brief at 2. Respondent also contends that:

Petitioner appealed the Tribunal’s decision to the Court of Appeals, resulting in an unpublished opinion issued in 2011 The Court of Appeals affirmed the Tribunal’s opinion, finding that Petitioner was not entitled to the religious exemption or the charitable exemption. Petitioner then appealed to the Supreme Court. The Supreme Court denied Petitioner’s application for leave to appeal the Court of Appeal’s opinion. *Id.*

Respondent further alleges that “nothing of substance has changed” and that the doctrine of res judicata applies as a bar to this action. Respondent’s Brief at 3.

Respondent quotes *Wayne Co v Detroit*, 233 Mich App 275; 590 NW2d 619 (1998), to contend that “res judicata serves as an absolute bar to an action when ‘earlier and subsequent actions involved the same parties or their privies, the matters of dispute could or should have been resolved in the earlier adjudication, and the earlier controversy was decided on its merits’” and that “[f]or a claim of res judicata, the subsequent action must also involve the same material facts (except for the tax years in question).” Respondent’s Brief at 13. Respondent contends that the same party brought the previous action so that action “involves the same parties or their privies” and that Petitioner’s bylaws and articles of incorporation have not changed; however, Petitioner contends that its activities have changed. See *Wayne, supra*. Respondent contends that although Petitioner claims to have added seven new services since its previous appeal, the new activities “are similar in nature to the classes and service previously offered by the Centre.”

Respondent's Brief at 13. Respondent asserts that in spite of the addition in activities by Petitioner, the material facts from the previous action have not changed in that the "new" offerings serve only to affirm the [Court of Appeal's] finding of the Centre's multi-purpose nature: a bed and breakfast, yoga studio, a place to walk in the woods, a place of learning meditation, a place for relaxation, and a place for spiritual healing." Respondent's Brief at 14.

Respondent further contends that the current claim is "based upon the same governing legislation as the previous claim," as required under *Wayne, supra*, because Petitioner requests a charitable exemption from real property taxation for the subject property under MCL 211.7o and 211.7s which are the two statutes upon which Petitioner based its previous claim, and the statutes have not changed.

Further, Respondent contends that under *Wayne, supra*, "the current matter in dispute was or should have been resolved in the previous action" because "[t]hese claims were fully resolved by the Michigan Tax Tribunal in the previous action, which was affirmed by the Michigan Court of Appeals before the Michigan Supreme Court denied leave to appeal." Respondent's Brief at 14. Respondent also contends that the previous action was decided on the merits as the Tribunal "decided the issue of whether the Centre should be exempt from paying taxes for religious or charitable reasons by considering the evidence presented and applicable Michigan statutes." Respondent's Brief at 15.

Respondent relies on *Wexford Medical Group v Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006), in order to contend that Petitioner is not entitled to a charitable institution exemption from real property taxation under MCL 211.7o, based upon the six factor test set forth in *Wexford, supra*, to determine if a claimant is a "charitable institution." Respondent affirms that

the under the first Wexford factor, the subject “charitable institution” is a non-profit institution, however, Respondent contends that Petitioner does not meet the second, fifth or sixth factor.

Respondent refers to the arguments rendered by the Michigan Court of Appeals in *Self Realization Meditation Healing Centre v Bath Township*, unpublished opinion per curiam of the Court of Appeals, issued June 21, 2011 (Docket No. 297475) (“*Self Realization*, COA Opinion”). With regard to factor two, Respondent reiterates that “Petitioner was organized (as it was in the prior appeal) to: “provide support to the general public and to those who are suffering on any level, to assist those who seek inner knowledge and personal growth in the pursuit of peace, health, and happiness through meditation, yoga and spiritual living...” Respondent’s Brief at 17 quoting Petitioner’s Articles of Incorporation, Article II, attached as Exhibit 1. Respondent contends that the Court of Appeals already found that the Petitioner’s Articles suggest “extremely broad purposes” and that the inclusion of such purposes would “expand the definition of charity nearly beyond all bounds.” See *Self Realization*, COA Opinion.

With regard to the fifth factor under *Wexford, supra*, Respondent contends that “Petitioner has provided no evidence that it charges no more than what is needed for maintenance.” Respondent’s Brief at 18. Respondent contends that Petitioner charges a 15% cancellation fee, whether or not it is collected, and Petitioner’s charges for its overnight fees “appear to be arbitrary or, at the least, consistent with fees charged by for-profit organizations, e.g. the ‘Two day Courses and Refreshers’ including accommodations and meals is \$272.” Respondent’s Brief at 18. (Citations omitted.) With regard to the sixth Wexford factor, Respondent quotes the *Self Realization*, COA Opinion, which states “[o]verall, [Petitioner] is just as much a bed and breakfast, a yoga center, a place to walk in the woods, and a center for learning meditation, as a charity.” Petitioner’s Brief at 18.

Respondent also contends, as did the Court of Appeals, that the property is not occupied solely for the purposes for which it was incorporated in that the subject property “is used for other purposes including walking in the woods, ‘relaxing at a rural bed and breakfast,’ and as a residence for Petitioner’s President.” *Id.*

Regarding the eligibility for MCL 211.7s, Respondent applies *Institute in Basic Life Principles, Inc v Watersmeet Twp*, 217 Mich App 7; 551 NW2d 199 (1996), to the facts of this case and contends that Petitioner does not meet the first or second prong of the test which it puts forth as “(1) whether the predominate purpose and practice include teaching religious truths and beliefs; and (2) whether the entire property was used in a manner consistent with the purposes of owning the institution.” Respondent’s Brief at 19, citing *Self Realization*, COA opinion.

To support a finding that this test is not met Respondent again goes back to the Centre’s Articles of Incorporation to contend that the Centre does not have a predominate purpose, but has religious, charitable, scientific, literary and educational purposes and is engaged in “teaching practices such as yoga, meditation, stress relief, using energy in a beneficial way, enjoying quiet time and walking through the woods. Therefore, the Centre’s principles and teachings are as much philosophy as religion.” Respondent’s Response at 9.

PETITIONER’S CONTENTIONS

In Petitioner’s Response Brief to Respondent’s Motion for Summary Disposition (“Petitioner’s Response”), Petitioner states that “Respondent has waived res judicata as an affirmative defense and should be precluded from asserting it in the current matter before the Tribunal.” Petitioner’s Response at 1. Petitioner contends that MCR 2.111(3) states that “affirmative defenses must be stated in a party’s responsive pleading, either as originally filed or as amended in accordance with MCR 2.118. Under a separate and distinct heading, a party

must state the facts constituting (a) an affirmative defense. . . .” Petitioner’s Response at 2.

Petitioner contends that Respondent did not adhere to the requirements under MCR 211.1(3) because it “failed to raise res judicata as an affirmative defense and never labeled it as an affirmative defense under a separate and distinct heading.” Petitioner’s Response at 1. Petitioner states that Respondent’s Answer to its Petition only states that “respondent denies that Petitioner is entitled to such exemptions for the reason that all such claims have been adjudicated by the Tribunal.” Petitioner also asserts that the Answer was not properly written in that it was not “written to fully advise the petitioner and the Tribunal of the nature of the defense,” pursuant to “Rule 192.10229(2).” *Id.*¹

Petitioner next alleges that res judicata must not be considered in this matter as it was not included in Respondent’s prehearing statement and that the Tribunal’s summary of prehearing conference and scheduling order made no mention of Respondent’s contention that res judicata applies to this matter. Petitioner contends that TTR 247 states the Member that conducts the conference shall issue an order which “controls the subsequent course of the proceeding unless modified at or before the hearing by the tribunal to prevent manifest injustice.” Petitioner’s Response at 3. Petitioner contends that “Respondent’s assertion that res judicata applies to bar this proceeding fails for two reasons. First, Respondent has not shown that the subsequent action – the current dispute – involves identical material facts as the previous case. Second Respondent cannot demonstrate that the current dispute was or could have been resolved by the previous action.” Petitioner’s Response at 5.

Petitioner contends that the earlier and current matters are different as the present matter involves different material facts, “i.e. several material facts have come into play or changed since

¹ The Tribunal finds that Petitioner is attempting to cite TTR 229 which is also designated as R 792.10229.

the previous case. In the previous case, no person who availed himself of Petitioner's services and teachings offered an expansive narrative detailing the nature of the services/teachings provided and Petitioner's role in their life. In contrast, the current case provides numerous in-depth factual accounts – all material to this case – of what Petitioner does from both religious and charitable perspectives.” Petitioner's Response at 6. Petitioner also contends as differing material facts between the subject and the previous matter, the extent of the reduced or no cost rates for services, the alteration of the dietary offerings of Petitioner, expanded weekly chanting and inspirational talks, and the extent to which behavioral rules are implemented and enforced regarding the prohibition of electronic devices and the observance of silent times. Petitioner also contends that during the tax years at issue, no one stayed at the Centre for its bed and breakfast accommodations, but lodged at the site “because of Petitioner's religious and charitable nature” *Id.*

Petitioner further contends that the subject property is exempt from real property ad valorem taxation pursuant to MCL 211.7o and/or MCL 211.7s and “contends that there is no genuine issue of material fact with respect to its claims that it is entitled to exemption under MCL 211.7o or MCL 211.7s, and that it is entitled to judgment in its favor as a matter of law under MCR 2.116(C)(10).” Petitioner's Brief in Support of its Motion for Summary Disposition (“Petitioner's Brief”) at 1.

Petitioner states that the Courts have enumerated a three prong test to determine if an institution is charitable under MCL 211.7o. See Petitioner's Brief at 13. Petitioner contends that it meets the first prong of the test “as the parties have stipulated that it is the sole owner and occupant of the property.” *Id.* Petitioner asserts the remaining questions are whether it is a charitable institution and where the property was occupied solely for

the purpose for which it was incorporated. Petitioner contends that it meets the second and third prong of the test.

With regard to the second prong of the test, Petitioner contends that it must demonstrate that it is a charitable institution by interpreting two Michigan Supreme Court cases, *Retirement Homes of the Detroit Annual Conference of the United Methodist Church v. Sylvan Township*, 416 Mich 340; 330 NW2d 682 (1982) and *Wexford, supra*. Petitioner contends that *Retirement Homes, supra* “provides guidance in delineating the definition of the term ‘charity.’” Petitioner’s Brief, at 15. Petitioner cites the six factors considered in the *Wexford* decision and contends that it meets the first factor because the parties stipulated to the same. Petitioner’s Brief at 17.

Petitioner contends that it meets the second factor because its Articles of Incorporation state that the Centre provides “‘support to the general public and to those who are suffering on any level, to assist those who seek inner knowledge and personal growth in the pursuit of peace, health and happiness through meditation yoga and spiritual living’” and that the corporation “‘is organized exclusively for religious, charitable, literary, and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.’” Petitioner’s Brief at 17-18.

Petitioner contends that it is meets the third factor as it offers its charity on a nondiscriminatory basis as “its services are available to anyone who wishes to avail themselves of the services it offers,” and it does not discriminate based on any individual’s financial circumstances, *i.e.* ability to pay.” Petitioner’s Brief at 18.

Petitioner alleges that it meets the fourth *Wexford* factor as it brings people’s hearts and minds under the influence of religion because its “focus is that all people and religions will lead to the one and same pathway, to Self-Realization and God Realization.” Petitioner’s Brief at 19. Additionally, Petitioner contends that the Centre “offers a number of classes specifically

designed to relieve bodies from suffering and constraint, thereby bringing the Centre squarely within Michigan's accepted definition of charity. . . ." Petitioner's Brief at 18-19.

Petitioner further provided the Tribunal with eleven affidavits from Centre attendees that described their spiritual experiences and confirmed that the Centre provided free and reduced services when needed.

With regard to the fifth Wexford factor, Petitioner claims that the onsite staff receives housing and its funding only provides for basic needs including utilities, staff support and maintenance and also for client services. Petitioner contends that its "articles of incorporation and bylaws do not allow any individual to profit from the Centre's earnings. For the three years at issue, the Centre received no profit at all for the tax year 2012, the others have not yet been finalized. Any profits the Centre receives are reinvested in the Centre to carry out its objectives and purposes." Petitioner's Brief at 23-24.²

With regard to the sixth Wexford factor, Petitioner alleges that in 2012 it gave away "approximately \$16,000 in bursaries, [free or reduced fee services] and incurred a deficit that year." Petitioner's Brief at 24. Petitioner contends that the existence of cancellation fees "is inconsequential, as it is simply recognition that the [p]erson who cancelled attention precluded the participation of another." *Id.* Petitioner contends that in 2012 it could have collected an additional \$1,079.87 in income from cancellation fees, but only received \$222.88 because cancellation fees are rarely collected. Petitioner contends that the Petitioner is charitable in nature and gives bursary awards therefore it meets Wexford's sixth factor.

Petitioner also contends that it occupied the subject property solely for the purpose for which it was incorporated. Petitioner contends that the "appropriate test to apply is simply

² As previously indicated, the Tribunal finds that it does not have jurisdiction over the 2014 tax year and that only the 2012 and 2013 tax years are at issue.

whether the ‘entire property was used in a manner consistent with the purposes of the owning institution.’” Petitioner’s Brief at 25 (citing *Holland Home v City of Grand Rapids*, 219 Mich App 384, 398; 557 NW2d 118, citing *Basic Life, supra*). Petitioner contends that it did use the entire property in a manner consistent with its purposes as it occupied the property “for the purpose of ‘supporting. . . .the general public . . .and those who are suffering on any level.’” Petitioner’s Brief at 25. Petitioner contends that the Centre conducts yoga and meditation sessions, occupies the property to enhance spiritual living “through prayer, silent time and observing a vegetarian lifestyle to avoid consumption of meat as this causes spiritual heaviness.” *Id.* at 26. Petitioner contends that “all the activities conducted at the Centre bespeak of a charitable purpose. . . .and the entire property was exclusively occupied solely for the purpose for which it was incorporated.” *Id.*

Petitioner also alleges that it is a religious society entitled to a religious exemption from real property taxation under MCL 211.7s. Petitioner applied what it calls “the modern test” under *Basic Life supra*. Petitioner contends that the Court of Appeals in *Basic Life, supra*, stated that just because “‘a petitioner may not fall within the traditional definition of religious society that does not mean it is not entitled to an exemption under the house of public worship exemption.’” Petitioner’s Brief at 28 quoting *Basic Life, supra*, at 16. Petitioner also claims that *Basic Life* was not a church, did not represent a particular religious denomination and that its board members were representative of different religious denominations, “including Baptist, Reformed Presbyterian, and Lutheran.” Petitioner’s Brief at 28 quoting *Basic Life, supra*, at 10. Petitioner quoted *Basic Life*’s bylaws which stated its purpose to be:

To introduce youth and parents to God’s basic way of life though the Gospel of the Lord Jesus Christ; to give clear instruction on how to apply God’s basic principles of life as revealed in the Scriptures, to develop meetings, seminars, radio broadcasts, television productions, printed literature, teaching curriculum,

books and other forms of media. . . and operate facilities for the training of personnel to accomplish the above and for the enrichment of youth, their families, their churches, their schools and their communities. Petitioner’s Brief at 29, quoting *Basic Life, supra*, at 15.

Petitioner alleges that “[t]he court held that because the petitioner [Basic Life] was organized for the predominate purpose of teaching its religious truths and beliefs, it fell within the meaning of “religious society” as defined by the court within the meaning of the statutes.” Petitioner’s Brief at 29.

Petitioner asserts that the Centre, like Basic Life, is not affiliated with one religious denomination. It asserts that “the predominate purpose of the Centre is to teach its religious truths and beliefs, which essentially are that all people and religions will lead to one and the same pathway, to self-realization and God-realization, *i.e.* to get to God.” Petitioner’s Brief at 29.

Petitioner also contends that the Centre follows the teachings of Mata Yogananda Mahasaya Dharmaji, a recognized spiritual leader. Petitioner asserts that “the Centre teaches that the best and quickest way to achieve self-realization and God-realization is through meditation. The Centre teaches that in order to be able to transcend the body to become self-realized and God-realized the body should be in a healthy condition. This is why the Centre teaches natural healing.” Petitioner’s Brief at 30.

Petitioner also contends that the subject property is used predominately for religious services or for the teaching of religious truths and beliefs of society. Petitioner poses that question, “did the Centre use the entire property in a manner consistent with its purpose?” Petitioner’s Brief at 30. Petitioner again points to *Basic Life, supra*, indicating that the Court found that Basic Life used the property in manner consistent with its religious purpose as it “conducted several seminars on the property,” had paved bike paths and access to lakes and undeveloped land for swimming and walking. Petitioner’s Brief at 31. Petitioner argues that the

Centre uses its entire property for religious services and the teaching of religious truths and beliefs of society as it uses its entire property to “conduct meditation, yoga, natural spiritual healing, progressive counseling and prayer. Like the petitioner in Basic Life, the Centre allowed individuals to walk the wooded undeveloped portion of the property or sit peacefully by the pond to find inner peace and quiet, more conducive to hearing the small voice of God the Centre believes is within all of us.” Petitioner’s Brief at 32.

STIPULATED FACTS

The parties have stipulated to the following facts:

1. Petitioner filed this appeal claiming that the subject property is exempt from ad valorem taxation under MCL 211.7o and/or MCL 211.7s.
2. For each of the tax years at issue, Petitioner contends that the taxable value of the subject property is \$0. (exempt).
3. The subject property’s true cash values, state equalized values, and assessed values are not in dispute in this case.
4. The sole issue presented by this case is whether the subject property is exempt under MCL 211.7o and/or MCL 211.7s.
5. The property at issue in this matter (the “subject property”) is certain real property situated in the Township of Bath, Clinton County, Michigan.
6. The subject property’s parcel number is 19-010-022-060-00.
7. The subject property is located at 7187 Drumheller Road, Bath, Michigan 48808.
8. The subject property is located in a rural residential area.
9. The subject property is classified for tax purposes as residential real property. The subject property’s tax classification is not in dispute.
10. The subject property consists of approximately 2.9 acres of land, and is improved with one two-story building (“residential-type structure”) and a detached one-story utility shed used as a workshop and for storage.

11. The Centre owned the subject property as of December 31, 2011, December 31, 2012 and December 31, 2013; it acquired the subject property by quit-claim deed dated April 19, 2005.
12. Based on Township records, the Centre remodeled the residential-type structure on the subject property in 2003 to convert the two-car garage into two wheelchair-accessible guest bedrooms and a bathroom
13. Petitioner states that the Centre remodeled the residential-type structure on the subject in 2003 to create a wheelchair-accessible entrance, reception area, and office, and to convert the two-car garage into wheelchair-accessible guest bedrooms and a bathroom. In 2005, the Centre added a wheelchair-accessible door to the meditation and classroom to allow it to be closed off from the central hallway. In 2007, the Centre added two walls to the interior layout: one to reduce the noise from the hot water system to the meditation and classroom and the healing room, the other to create a space for onsite staff and volunteers to meet/eat together and to reduce noise from the kitchen to the retreatants' living and dining room.
14. The unimproved portion of the subject property consists of a hardwood forest with a walking trail and pond.
15. The subject property is subject to a 0% principal residence exemption. The subject property's principal residence exemption is not in dispute.
16. The tax years in issue in the case are 2012, 2013 and 2014.³
17. For tax years 2012 and 2013, the Township assigned the following assessed and table values to the subject property:

Parcel Number: 19-010-022-200-060-00

Year	SEV	AV	TV
2012	\$120,500	\$120,500	\$120,500
2013	\$115,900	\$115,900	\$115,900

18. The Centre is a nonprofit corporation organized under Michigan law in 2003.
19. The Centre is a non-stock corporation organized on a directorship basis.
20. The Centre occupied the subject property for the tax years in issue in this case, and continues to occupy the subject property.

³ The Tribunal has determined that it does not have jurisdiction over the 2014 tax appeal.

21. The Centre is part of a larger organization, which was founded by Mata Yogananda Mahasaya Dharma, a woman from the United Kingdom who is the spiritual leader of the worldwide Self Realization Meditation Healing Centres.
22. The Centre's "Mother Center" is in the United Kingdom. The Centre is affiliated with the Mother Center.
23. Jennifer (Joanne) Peeters resides at the subject property, and has resided there since 2002.
24. Jennifer (Joanne) Peeters, Scott (Paul) Rowe, and Betty A. Kronemeyer incorporated the Centre in 2003.
25. The onsite staff at the Centre for the past five years consists of Jennifer (Joanne) Peeters, who has been part of the Centre's onsite staff since 2003, and Scott (Paul) M. Rowe, who was onsite staff from 2003 through 2012.
26. Jennifer (Joanne) Peeters is and has been associated with the Centre since 2003. She has served as onsite staff, a Board Member, and Secretary, and been the Centre's President since 2012. She also served as the Centre's Treasurer from 2003 to 2013.
27. Mata Yogananda Mahasaya Dharmaji founded the Centre in Michigan 2003 and has been and continues to be the Spiritual Head/Leader of the worldwide Self Realization Meditation Healing Centres.
28. The employees of the Centre in the last five years are/were: Jennifer (Joanne) Peeters (through present) and Scott (Paul) M. Rowe (through 2012).
29. The officers of the Centre during the last five years are/were: Scott (Paul) M. Rowe, President (2007 through 2012); Jennifer (Joanne) Peeters, President (2013 through present), Secretary (2003 through present), Treasurer (2003 through 2013); Hananda Whittingham, Treasurer (2013 through present).
30. The Centre has not had a Vice President during the last five years (2009 to 2013).
31. The Directors of the Centre during the last five years are/were: Jennifer (Joanne) Peeters (2003 through present); Daniel Francis Casley (2003 through present); Crissy Schofield (2008 through present); Nadine Stinnett (2012 through present); Hananda Whittingham (2013 through present); Scott (Paul) M. Rowe (2003 through 2012); and K. Marie Burdick (2008 through 2011).
32. The Centre does not have committees, committee members or agents.
33. Onsite Staff of the Centre receive housing and meals.

34. Onsite staff of the Centre receive usage of the Centre's telephone (excluding long distance calls), computer, and Centre services at no charge.
35. The Centre's vehicle is available for use by the onsite staff. However, onsite staff are required to reimburse the Centre for fuel and other expenses.
36. No person, including Centre employees, directors, staff, and officers, receive retirement or insurance benefits from the Centre.
37. The Centre's Articles of Incorporation dated June 17, 2003 are attached as **Exhibit 1**.
38. The Centre's Bylaws dated September 28, 2007 are attached as **Exhibit 2**.
39. The subject property quit claim deed dated April 19, 2005 is attached as **Exhibit 3**.
40. The IRS determined that the Centre is exempt from payment of federal income tax under §501(c)(3) of the Internal Revenue Code. The October 16, 2007 letter from the IRS approving the Centre's application for tax exempt status under §501(c)(3) is attached as **Exhibit 4**.
41. The October 22, 2007 letter from the IRS regarding the Centre's federal income tax-exempt status is attached as **Exhibit 5**.
42. The Centre's 2012 "Counts Tally" is attached as **Exhibit 6**. The Tally was compiled on a roughly monthly basis by Jennifer (Joanne) Peeters, based on the number of people attending and services provided from various sources, including a daily planner, message book, and prayer request book. Because those documents contain personal information and attendees of the Centre have an expectation that their information will be maintained with confidentiality, the Centre maintains that it cannot provide such documents.
43. The Centre does not keep attendance/sign-in style records. Based on the compiled Counts Tally for the 2012 calendar year, there were approximately 1,400 services provided by the Centre.
44. If an individual cannot pay the Centre's fees, the Centre offers a bursary award and allows the individual to receive the services needed from the Centre at a lower cost or no cost at all. Jennifer (Joanne) Peeters currently makes all determinations regarding the availability and amount of bursary awards/fee reductions, on a need-only basis. If other Centre employees are present they and Ms. Peeters make a joint decision on such matters. The Centre does not track how many individuals receive bursary awards. The approximate bursary award values for various services for 2012 are:
 - a. Natural Spiritual Healing and Progressive Counselling: \$12,505
 - b. Retreatants: \$2,811

- c. Yoga students: \$114
 - d. All other students: \$648
 - e. Total: \$16,078

45. The Centre reports its annual income and expenses for calendar years 2010, 2011, 2012 and 2013 as:
 - a. 2010: Income \$41,705.82; Expenses: \$50,421.19
 - b. 2011: Income \$53,517.50; Expenses: \$51,948.78
 - c. 2012: Income \$46,640.18; Expenses: \$47,996.34
 - d. 2012 numbers have not been finalized; values are approximate.
 - e. January – July 2013: Income: \$22,860.38; Expenses: \$20,986.90
 - f. 2013 numbers have not been finalized, are approximate values only, and do not include depreciation.

46. The Centre’s 2014 pricing list is attached as **Exhibit 7** (available at <http://www.selfrealizationcentremichigan.org/pricing.html>).

47. A list of services provided by the Centre is attached as **Exhibit 8** (available at <http://www.selfrealizationcentremichigan.org?Offerings.html>).

48. A list of accommodations provided by the Centre is attached as **Exhibit 9** (available at <http://www.selfrealizationcentremichigan.org/about.html>).

49. A document entitled “About the Centre” is attached as **Exhibit 10** (available at <http://www.selfrealizationcentremichigan.org/about.html>).

50. The Centre’s 2007 Course Program is attached as **Exhibit 11**.

51. The Centre’s 2012 Course Program is attached as **Exhibit 12**.

52. The Township did not award any exemptions specifically under MCL 211.7(o) to any taxpayer for tax years 2007-2013.

53. The Township awarded seven exemptions specifically under MCL 211.7(s) to taxpayers within its jurisdiction for tax years 2007-2013. All of these exemptions were put in place prior to 2007 except for Psalms 91 Church, which purchased the Chapel Hill United Methodist Church on February 1, 2013. The seven exemptions referenced above are:
 - a. Parcel 010-100-020-001-00; 010-100-020-003-00; 010-017-400-005-50. Bath Baptist Church. 13527 Webster Road. Specific use of property is a house of public worship under MCL 211.7(s).
 - b. Parcel 010-023-300-015-00. Community of Christ – Rose Lake. 14980 Upton Road. Specific use of property is a house of public worship under MCL 211.7(s).

- c. Parcel 010-025-100-110-00. House of Prayer. 9974 E. Saginaw/Old M-78. Specific use of property is a house of public worship under MCL 211.7s.
- d. Parcel 010-034-400-030-01; 010-034-400-035-00. Psalms 91 Church International. 7501 Coleman Road. Specific use of property is a house of public worship under MCL 211.7(s).
- e. Parcel 010-035-300-045-01; 010-035-300-045-50. Spirit of Christ Church. 8170 Coleman Road. Specific use of property is a house of public worship under MCL 211.7(s).
- f. Parcel 010-100-001-001-01; 010-100-018-004-00. Bath United Methodist Church. 13505 Webster Road. Specific use of property is a house of public worship and parsonage under MCL 211.7(s).
- g. Parcel 010-260-000-054-00; 010-260-000-058-00; 010-260-000-060-00; 010-270-000-061-00; 010-270-000-062-00. Lakeside Chapel. 5800 Park Lake Road. Specific use of property is a house of public worship under MCL 211.7(s).

APPLICABLE LAW

SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

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, both parties moved for summary disposition under MCR 2.116(C)(10).

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied. See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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. See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

CHARITABLE INSTITUTION EXEMPTION UNDER MCL 211.7o

The exemption for nonprofit charitable institutions is found in MCL 211.7o(1) which states that:

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 standard for a charitable 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, 753 n

1; 298 NW2d 422 (1980); see also *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968), which states, “[t]he 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”

In *Wexford, supra*, the Supreme Court presented the test for determining if an organization is a charitable one under MCL 211.7o and stated:

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.

The first step in determining whether an organization is charitable is to understand the definition of “charity.” 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.*” *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982). [Emphasis in original.]

In order to determine if it is entitled to a property tax exemption under MCL 211.7o, Petitioner must prove by a preponderance of the evidence that it is a “charitable institution.” In this regard, the Michigan Supreme Court concluded that the institution’s activities “as a whole” must be examined. *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 737 (1985). In *Michigan Baptist Homes and Dev Co v Ann Arbor*, 396 Mich 660,

670; 242 NW2d 749 (1976), the Michigan Supreme Court stated that “exempt status requires more than a mere showing that services are provided by a nonprofit corporation.” The Court also stated that to qualify for a charitable or benevolent exemption, the use of the property must “benefit the general public without restriction.” *Id.* at 671.

Whether an institution is a charitable institution is a fact-specific question that requires examining the claimant’s overall purpose and the way in which it fulfills that purpose. In this regard, the Michigan Supreme Court held in *Wexford, supra* at 215, that several factors must be considered in determining whether an entity is a charitable institution for purposes of MCL 211.7o:

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

RELIGIOUS INSTITUTION EXEMPTION UNDER MCL 211.7s

The exemption for houses of public worship; parsonage is found in MCL 211.7s which states:

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 include 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.

An association or organization qualifies as a “religious society” if its predominant purpose and practice include teaching religious beliefs. See *Basic Life, supra*.

CONCLUSIONS OF LAW

The Tribunal has carefully considered both Respondent’s and Petitioner’s Motions under MCR 2.116 (C)(10) and finds that granting Respondent’s Motion and denying Petitioner’s Motion is warranted. Before an analysis of MCL 211.7o and MCL 211.7s and their applicability to the subject property, it should be noted that Respondent has alleged that this matter is barred under the doctrine of res judicata.

RES JUDICATA

On the matter of res judicata, Respondent contends that the instant action has already been fully litigated. Petitioner contends that Respondent waived this defense as it was not properly plead under MCR 2.111(3). The Tribunal commends Petitioner for its knowledge of the Michigan Court and Tax Tribunal Rules, however, the Tribunal finds that it and Petitioner did have notice that Respondent intended to assert that Petitioner is not entitled to ad valorem property tax exemptions under MCL 211.7o and MCL 211.7s for the reason that all such claims have been adjudicated by the Tribunal and the Michigan Court of Appeals. See Respondent’s Answer to Petitioner’s Petition filed June 5, 2012. Further, attached to the Answer as Exhibit A is the Tribunal’s Final Opinion and Judgment (“FOJ”) in *Self Realization Meditation Healing*

Centre v Bath Township, MTT Docket No. 338925 (March 18, 2010),⁴ issued after an analysis of Petitioner's exceptions to the Tribunal's Proposed Opinion and Judgment. The holding in the Tribunal's FOJ was that Petitioner was not entitled to an exemption from real property taxation under MCL 211.7n, 211.7o, or 211.7s. Also attached as Exhibit B to the Answer is the Michigan Court of Appeals decision in *Self Realization Meditation Healing Centre v Bath Township*, unpublished opinion per curium of the Court of Appeals, issued June 21, 2011 (Docket No. 297475),⁵ affirming the Tribunal's FOJ. Finally, attached as an Exhibit C to the Answer is the Order of the Michigan Supreme Court, issued December 28, 2011 (Docket No. 143498) denying Petitioner's Leave to Appeal from the decision of the Court of Appeals. The Tribunal finds from the aforementioned Answer and exhibits that the Tribunal and Petitioner had notice of Respondent's intention to assert the doctrine of res judicata. Further, the Tribunal Judge recalls Petitioner's mention of the doctrine of res judicata at the prehearing conference on this matter, however, through its own fault, failed to include the defense in its Prehearing Summary and Order of Procedure.⁶

The Tribunal finds that both parties have applied the correct standard with regard to determining if this matter is barred by the doctrine of res judicata. *Wayne*, supra at 277. In this matter, clearly the earlier and current actions involve the same parties and were based on the same governing legislation. The parties to both cases are the Centre and Bath Township and in

⁴ Subsequently referred to as "*Self Realization*, MTT Opinion."

⁵ Subsequently referred to as "*Self Realization*, COA Opinion."

⁶ The Tribunal questions, if it is to strictly enforce the Michigan Court Rules, should it disregard Petitioner's brief in its entirety? MCR 2.119(A)(2) states:

A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based. Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed **20 pages** double spaced, exclusive of attachments and exhibits. [Emphasis added].

The Tribunal notes that Petitioner's Brief is thirty-four pages long while Respondent's Brief is twenty pages long. Further, the Tribunal did not permit a brief of any length.

both cases, Petitioner seeks an exemption from property taxation for the subject property under MCL 211.7o and MCL 211.7s.⁷ The Tribunal finds that the earlier action was decided on its merits by both itself and the Michigan Court of Appeals; however, the questions remain with regard to whether the current action involves the same material facts as the previous action, and whether the dispute could or should have been resolved in the earlier adjudication.

Black's Law Dictionary defines a material fact as "a fact that is significant or essential to the issue at hand." Black's Law Dictionary, (9th ed). Petitioner contends that there are new and additional facts to be considered in determining if the subject property is entitled to an exemption from property taxation. New and additional facts include the policies regarding electronic device usage, silent time and vegetarian diet. New and additional facts include new class offerings, increased chanting and inspirational talks and numerous affidavits from attendees of the Centre regarding their spiritual experiences. New and additional facts include information about reduced and no cost services and information regarding whether the subject property was utilized as a bed and breakfast during the tax years at issue.

The Court of Appeals stated that "the doctrine of res judicata applies to decisions of the Tribunal," however, res judicata can only bar a subsequent action between the same parties, or their privies, if the facts or evidence essential to the case are *identical* to those that were essential to a prior case. *Begin v Michigan Bell Telephone Co*, 284 Mich App 581; 773 NW2d 271 (2009). As the facts here are not identical to those asserted in the prior case, the Tribunal finds that res judicata does not apply. Further, as the new and additional facts were not presented in the earlier action, the dispute could not have been resolved in the earlier adjudication. Therefore, the Tribunal finds that the instant action is not barred by res judicata.

⁷ The prior action also included a claim for exemption under MCL 211.7n.

CHARITABLE EXEMPTION FROM TAXATION UNDER 2.117o

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). 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 institution (MCL 211.7o), or a religious society (MCL 211.7s). Charitable institutions and religious societies have already been recognized as exempt classes. Because Petitioner is attempting to establish membership in those classes, the preponderance of evidence standard applies. Also, it should be noted that Petitioner is 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.’ *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748), 752 (n 1) (1940).” 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.”

Both Petitioner and Respondent have presented or referred to the relevant statute and case law regarding a charitable exemption from taxation under MCL 211.7o. As previously indicated, *Wexford, supra*, sets forth three prongs to determine whether the subject qualifies for an exemption under MCL 211.7o. The parties have stipulated that Petitioner is an owner and

occupies the subject. The issues remaining are regarding whether Petitioner is a nonprofit institution and whether Petitioner occupies the subject solely for the purposes for which it is incorporated.

The tax years in question in this matter are 2012 and 2013, therefore, the Tribunal has to determine that taxable status of the subject property as of December 31, 2011 and December 31, 2012. See MCL 211.2(2). Whether an institution is a charitable institution is a fact-specific question that requires examining the claimant's overall purpose and the way in which it fulfills that purpose. *Wexford*, also enumerates the six factor test to determine whether the institution is a nonprofit for purposes of MCL 211.7o. The Tribunal notes that it is taking a fresh look at this matter and not merely rubber stamping the higher Court's decision, in light of the new facts presented.

Both Petitioner and Respondent agree that Petitioner is a non-profit institution under Wexford factor one. Respondent alleges that Petitioner is not a charitable institution under factors two, five and six. The Tribunal finds that Petitioner is not organized chiefly; if not solely for charity and that its overall nature is not charitable, as fully discussed below. The Tribunal further finds that there is insufficient documentation that Petitioner does not charge more than what is needed for its successful maintenance.

The Tribunal finds that Respondent heavily relies upon the decision in *Self-Realization, supra*, and it should be noted that the Michigan Court of Appeal's decision in *Self-Realization, supra*, is not precedential as MCR 7.215(C)(1) currently provides that "[a]n unpublished opinion is not precedentially binding under the rule of stare decisis." The Tribunal notes, however, that such decisions are, "considered instructive or persuasive." See *Paris Meadows, LLC v Kentwood*, 287 Mich App 136, 145-146; 783 NW2d 133 (2010). See also the unpublished

opinion *per curiam* of the Court of Appeals in *Froling v Bloomfield Hills* issued January 23, 2014 (Docket No. 309091).

With regard to whether Petitioner is organized chiefly if not solely for charity, Petitioner relies upon its Articles of Incorporation and states that it is organized for charity under IRC 501(c)(3). Respondent, however, indicates that as the Court of Appeals previously held, Petitioner's Articles of Incorporation are too broad and would expand the definition of charity. The Tribunal agrees with Respondent and the Court of Appeals reasoning in *Self Realization*, COA Opinion, in the analysis of factor two. The Centre was organized for the following purposes according to its Articles of Incorporation:

[T]o provide support to the general public and to those who are suffering on any level, to assist those who seek inner knowledge and personal growth in the pursuit of peace, health, and happiness through meditation, yoga and spiritual living. The corporation is organized exclusively for **religious, charitable, scientific, literary and educational purposes**. [Emphasis added].

The Court of Appeals stated that “there were several purposes for which [the Centre] was incorporated, although charity is one of them, it is but one of a group or purposes distinguishable from one another. The other purposes are religious, scientific, literary, and educational.” *Id.* The Court also held, and the Tribunal agrees, that “[t]he first sentence in the quoted above passage suggests extremely broad purposes, indeed almost a purpose that is an all-encompassing purpose to help people with life in general.” *Id.* The Court further found that “in terms of [the Centre's] statement of purposes, which, if they constitute charity would expand the definition of charity nearly beyond all bounds, in such a way that helping people with almost any mental activity would qualify as charity.” *Id.* There has not been an amendment to the Articles of Incorporation as considered by the Michigan Court of Appeals, therefore, the Tribunal finds that Petitioner is not organized chiefly for charitable purposes.

In further evidence that the Centre is not organized chiefly, if not solely for charity, is its existence a bed and breakfast. On the Centre's website regarding its accommodations and meals, it states, "We welcome anyone needing an overnight retreat at a quiet, peaceful place – even if you are on your way to somewhere else, are in our area for a business meeting, attending classes, seeing a specialist for treatment, or visiting family and friends. Breakfast is included; add delicious vegetarian lunch and dinner is desired." Joint Stipulation of Facts ("JSOF"), Exhibit 9. It also states under "Personal Retreats and Getaways," "Arranged to fit your schedule, including weekdays. Start by choosing your overnight room option, with breakfast included. **If you wish**, you may add other meals, any Workshop or Class; Transformation Hatha Yoga, private appointments for Natural Spiritual Healing or Progressive Counselling." [Emphasis added]. *Id.* Petitioner website further states under "classes offered," "Treat yourself to a longer retreat by either arriving Friday evening or staying until Sunday morning. \$39 with lunch & refreshments or \$86 with shared room accommodation & all meals, +\$60 for **optional class**." [Emphasis added] The aforementioned statements indicate that any person can lodge at the Centre for any of the enumerated reasons, for payment, with late fees, with breakfast, and choose whether or not to participate in the Centre's activities, counselling, workshops or classes.⁸ The Tribunal finds that the existence as a bed and breakfast, including the marketing on the website, strongly suggests that the bed and breakfast is operating as a business venture rather than in a charitable manner. The Centre also appears to charge a market rate for lodging adding proof that the bed and breakfast is a business venture and it does not exist solely for charity. Jennifer (Joanne) Peeters indicated in her affidavit that no one used the Centre as a bed and breakfast in 2011 or 2012; however, it does appear that it had paying lodgers during those years who could have used

⁸ Some of Petitioner's website information was printed out as exhibits to the JSOF and some information was gleaned from an examination of the website, which address was included in the JSOF.

the Centre simply as a getaway. Affidavit of Jennifer (Joanne) Peeters, Petitioner's Brief, Exhibit C, paragraph 52. JSOF, Exhibit 6. Thus, the Tribunal must conclude that Petitioner has not met the first Wexford factor as it is not organized chiefly, if not solely for charity.

The Tribunal finds that the Centre satisfies factors three and four in that it does not discriminate amongst different people with regard who receives services and it does appear to relieve one's body from suffering through meditation and yoga, per the affiants. Respondent does not dispute that Petitioner meets these factors.

With regard to the fifth factor, the Tribunal finds that Petitioner did not, and cannot, provide its actual fees for services collected in relation to what is needed for its maintenance. In the JSOF, Exhibit 6, the Centre provides its "counts tally" with an estimation of the services provided in by the Centre in 2012. In the JSOF, paragraph 42, it is written, "[t]he tally was compiled on a roughly monthly basis by Jennifer (Joanne) Peeters, based on the number of people attending and services provided from various sources, including a daily planner, message book, and prayer request book." Paragraph 43 states, "The Centre does not keep attendance/sign-in style records." Petitioner did provide its income and expenses for 2011 and 2012, such as they were, and did appear to lose money during tax years 2012 and 2013, however, just because an organization loses money does not mean it is charitable. If a for-profit corporation loses money it is not considered a charity.⁹ Thus, given Petitioner's inability to provide additional evidence to demonstrate that it meets the fifth Wexford factor, and the strict construction of exemption statutes, the Tribunal finds that Petitioner does not meet this factor.

With regard to the sixth and final factor, whether Petitioner's overall nature is charitable, the Tribunal finds it is not. More specifically, in the stipulation of facts, the parties agreed that

⁹ See *Harmony Montessori Center v Oak Park*, unpublished opinion per curiam of the Court of Appeals issued February 18, 2014 (Docket No. 312856), (citing *Wexford, supra*, at 207-209, 217.)

Petitioner gave reduced or no-cost services (bursary awards) to attendees of the Centre. The total amount of the bursary awards for 2012 were \$16,078. JSOF 44(e). The total amount of bursary awards for 2011 were not provided, however, at the oral argument on these motions, Petitioner indicated that it did give bursary awards in 2011. The Tribunal finds, however, that the offering of assistance regardless of the amount does not indicate that the *overall nature* of the organization is charitable as required by *Wexford, supra*.

Petitioner alleges that it provides charity to anyone that wishes to utilize the Centre regardless of their ability to pay for services and such appears to be the case based on the bursary awards. The Centre, however, also charges fees for accommodations and meals and charges late fees for cancellation. The Centre's pricing guide states, "If you cancel a course or accommodation: with more than six weeks notice we can return all fees except 15%; with more than two weeks notice, we can return the accommodation and meals only, (less 15%); with less than two weeks notice the meals only (less 15%). After the commencement of a course, refunds are not given." See JSOF, exhibit 7. While the Tribunal understands that there is no monetary threshold to qualify as a "charity," if the Centre provides charity to whomever wishes to utilize it, why are late fees charged? The Court of Appeals in *Self Realization*, COA Opinion, found "a gift is something given voluntarily without payment in return." The Court cited *Sands Appliance Srvs Inc v Wilson*, 463 Mich 231, 241; 615 NW2d 241 (2000), quoting *Random House Webster's College Dictionary*. The fact that the Centre collects only a small amount of late fees due does not supersede the fact that it has a policy for the collection of late fees and calls into question the charitable nature of this policy. See Affidavit of Jennifer (Joanne) Peeters paragraph

60, Petitioner’s Brief, Exhibit C.¹⁰ Further, as the Court of Appeals indicated in *Self Realization*, COA Opinion, “[o]verall, [Petitioner] is just as much a bed and breakfast, a yoga center, a place to walk in the woods, and a center for learning meditation, as a charity.” Thus, the Tribunal finds that the overall nature of the organization is not charitable given the analysis under factor one and Petitioner’s policy regarding cancellation, therefore, Petitioner does not meet the sixth Wexford factor.

Petitioner presented new and additional facts regarding the Centre for this appeal. Those facts include the alteration of dietary offerings, expanded weekly chanting and inspirational talks, the prohibition of electronic devices and the observance of silent times. New classes are also offered and Centre retreatants provided affidavits regarding the bursary awards they received. The Tribunal does not find that any of these new facts, that were not identical to the facts in the previous appeal, suggest that the Centre is a charitable institution. While these affidavits clearly establish that the Centre has a positive impact on many individuals, it does not assist in the analysis of the Wexford factors such as demonstrating that Petitioner is organized chiefly for charity or that its overall nature is charitable.

The Tribunal, as did the Court of Appeals in *Self Realization*, COA Opinion, finds that the property is not occupied solely for the purposes for which it was incorporated in that the subject property “is used for other purposes, including walking through the woods and relaxing at a rural bed and breakfast.” Thus, the Tribunal finds that the claimant is not a “charitable

¹⁰ Although there is insufficient evidence on record to conclusively establish that the cancellation fees are “not more than what is needed for its successful maintenance,” Petitioner also did not demonstrate why the fees were necessary for successful maintenance. *Wexford, supra* at 215. The Tribunal finds that the policy of charging cancellation fees suggests that Petitioner does charge more than necessary for successful maintenance and does not meet the fifth factor of *Wexford*.

institution” and does not occupy the property solely for its charitable purposes. As such, Petitioner is not entitled to a charitable exemption under MCL 211.7o.

RELIGIOUS EXEMPTION FROM TAXATION UNDER 211.7s

The Tribunal finds that the subject property is not a religious society exempt from real property taxation under MCL 211.7s. Petitioner and Respondent provide slightly different tests so the Tribunal finds that it will adopt the test utilized by the Michigan Court of Appeals in *Self Realization*, COA Opinion, which is also the test utilized by Respondent. Respondent and the Court of Appeals present the test as a two factor test: “whether the predominant purpose and practice include teaching religious truths and beliefs; and, whether the entire property was used in a manner consistent with the purposes of the owning institution.” *Self Realization*, COA Opinion (citing *Basic Life*, *supra*).

Petitioner contends that like the petitioner in *Basic Life*, *supra*, it has the predominate purpose of teaching religious truths and that it is not barred from receiving an exemption because it does not fit within a particular religious denomination. The Tribunal finds, however, that there is no similarity when comparing the Self Realization Articles of Incorporation with the petitioner’s purpose in *Basic Life*, *supra*. Petitioner’s Articles of Incorporation state that the corporation is organized “exclusively” for many purposes, including, religious, charitable, scientific, literary and educational purposes according to its Articles of Incorporation, not just for religious purposes. In contrast, as quoted above, Basic Life’s purpose was clearly solely centered around religion and does not include any reference to charitable, scientific, literary, or educational purposes. Thus, Petitioner has not demonstrated it has the predominant purpose of teaching religious truths. Like the charitable analysis above, the Tribunal finds that the property is not used exclusively in a manner consistent with its purposes. Specifically, the property is not

occupied solely for the purposes for which it was incorporated in that the subject property “is used for other purposes, including walking through the woods and relaxing at a rural bed and breakfast.” *Self Realization*, COA Opinion.

Further, even considering the new and additional facts provided by Petitioner in this appeal, the Tribunal still finds that the Centre is not a religious society. Petitioner provided eleven affidavits of attendees of the Centre, as new evidence in this case, and the affidavits indicate that the Centre provides religious experiences for them. For example, “the Centre has provided me with a faith in God, an understanding of my relationship with God. Petitioner’s Brief, Exhibit E. “By the last night of meditation, I had, for the first time in my life, a clear and visceral knowing of the loving arms of Jesus.” Petitioner’s Brief, Exhibit F. My connection with the Hindu gods and time I spend meditating and chanting is a daily ritual now.” Petitioner’s Brief, Exhibit H. In addition to the affidavits attesting to attendee’s religious experiences, Petitioner also contends that new facts regarding its religious activities including the alteration of dietary offerings, expanded weekly chanting and inspirational talks, the prohibition of electronic devices and the observance of silent times demonstrate its religious purpose. Though vegetarianism, prohibition of the use of electronic devices, and the observance of silent times appear to be required for lodging or attendance of the Centre, one need not participate in chanting or inspirational talks. Thus, the Tribunal finds that the Centre does provide religious experiences for some attendees, however, it also provides simply a place to getaway for others.

Given the above the Tribunal finds that it is clear that *a part* of Petitioner’s purpose is religious and has the effect of teaching religious truths. However, that the Centre’s *predominate* purpose and practice is not the teaching of religious truths and beliefs and its property was not used predominately for religious service of the teaching of religious truths and beliefs of society.

As previously discussed, anyone can come to the Centre for a getaway retreat, without choosing to participate in the Centre's activities, counselling, workshops or classes. The affidavits and new activities offered by Petitioner do not indicate that Petitioner is entitled to a religious institution exemption under MCL 211.7s.

The Tribunal has reviewed the Motions, responses, and supporting documentation and finds that Petitioner has not established, by a preponderance of the evidence, that the subject property is not entitled to an exemption under MCL 211.7o or MCL 211.7s. Further, under MCR 2.116(C)(10), Respondent's Motion for Summary Disposition is granted as the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). Petitioner's Motion for Summary Disposition shall be denied.

JUDGMENT

IT IS ORDERED that the subject property is not exempt from ad valorem real property taxation under MCL 211.7o or MCL 211.7s.

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

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

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

By: Preeti P. Gadola

Entered: 3/26/14