

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

CONGREGATION YAGDIL TORAH,  
  
Petitioner-Appellant,

UNPUBLISHED  
July 22, 2014

v

CITY OF SOUTHFIELD,  
  
Respondent-Appellee.

No. 314735  
Tax Tribunal  
LC No. 00-382349

---

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

Petitioner appeals as of right from a judgment of the Michigan Tax Tribunal ("MTT") establishing the state equalized value, true cash value, and taxable value for the 2009 tax year by the parties' stipulation, and concluding that the subject property is not exempt from ad valorem property taxes for tax years 2009 through 2012.<sup>1</sup> For the reasons set forth in this opinion, we affirm.

**I. BACKGROUND**

On July 29, 2009, petitioner filed a petition with the MTT, arguing (1) that property that it owned, a single-family residence located at 15629 Jeanette Street in Southfield that was being used as a dormitory for female seminary students, was "owned by an ecclesiastical organization and is used in [sic] its exempt purpose and should therefore have a zero taxable value," and (2) that, if the property did not qualify for an exemption, respondent's "assessment [was] excessive and [did] not reflect the true cash value of the property." Respondent denied that petitioner was eligible for an ecclesiastical exemption and contested the accuracy of petitioner's proposed valuation. On May 14, 2012, petitioner filed two motions for summary disposition, under MCR 2.116(c)(10) arguing that it was eligible for an exemption under MCL 211.7o, MCL 211.7s, and/or Const 1963, art 9, § 4. Additionally, petitioner requested summary disposition on the grounds that respondent had failed to adequately and/or timely answer its requests for

---

<sup>1</sup> The parties stipulated that, if the MTT denied petitioner's exemption, "the true cash value of the subject property for the 2009 tax year would be \$120,000, with corresponding assessed and taxable values of \$60,000." Accordingly, this appeal concerns only the exemption issue.

admissions. The MTT denied petitioner's motions for summary disposition, stating that "the goal of requests for admissions is to expedite the pending action, not to eliminate it," and the record created disputed questions of fact, including "whether Petitioner is entitled to an exemption from taxation and the true cash value of the subject property."

At the October 17, 2012 hearing, Rabbi Eli Yelen testified that petitioner, an Orthodox Jewish congregation, "teaches people of the Jewish faith . . . how to live through . . . pray[er] services, study services, charitable services, all the ways that we have of the Jewish way of life." Petitioner's seminary program is a full-time, nine-month course of study for 17- and 18-year-old Jewish females. Although approximately 30 families belong to the congregation, none of the seminary students, who must apply and be accepted to the program, are drawn from the congregation. Rabbi Yelen testified that some classes are held at the subject property, a four-bedroom house, but most are held at petitioner's synagogue. Rabbi Yelen further stated that a student's day begins with breakfast at the house and prayer at the synagogue at 8:45 a.m. The students typically remain at the synagogue for most of the day and return to the house at 6:00 p.m., followed by a class at the house at 7:45 p.m. The students observe religious services at the house on Friday nights.

The MTT entered a final opinion and judgment on November 29, 2012, concluding that (1) the exemption iterated by Const 1963, art 9, § 4 was defined by statute in MCL 211.7o and MCL 211.7s, (2) petitioner was not eligible for an exemption under MCL 211.7o because "the subject property is not used for charitable purposes" as it was "not open to the general public and only benefits a very few select individuals rather than society in general," and (3) petitioner was not eligible for an exemption under MCL 211.7s because the property was "not a residence for the Rabbi or his assistants" and "not used *predominantly* for religious services or for the teaching of the religious truths and beliefs of" petitioner. (Emphasis in original).

Petitioner filed a motion for reconsideration, on December 20, 2012, arguing that (1) it was eligible for an exemption because its seminary program "provides a religious education and the subject property is an integral part of that education," (2) the requirement that students live at the property was "not ancillary to [their] studies" but "a required component of the program," (3) petitioner's seminary program was designed "to provide a benefit upon society in general by operating the Seminary program to teach and promote Torah[-]based Judaism," and (4) the facts of this case were distinguishable from those of an unpublished opinion<sup>2</sup> of the Michigan Court of Appeals. Respondent did not respond, and the MTT denied the motion for reconsideration in a January 23, 2013 order, concluding that, "[e]ffectively, Petitioner does discriminate in that it chooses who, among the group it purports to serve (i.e., Jewish females between the ages of 17-18), deserves its services," and petitioner "failed to show how the services provided by the subject property confer a benefit upon society in general."

Petitioner then filed a claim of appeal with this Court on February 12, 2013.

---

<sup>2</sup> *Congregation Mishkan Israel Nusach H'Ari v City of Oak Park*, unpublished opinion per curiam of the Court of Appeals, issued December 13, 2012 (Docket No. 306465).

On appeal, petitioner argues that the MTT erred when it concluded that the subject property, was not exempt from taxation under either MCL 211.7o, MCL 211.7s, or Michigan's 1963 Constitution.

“Where fraud is not claimed, this Court reviews the tribunal’s decision for misapplication of the law or adoption of a wrong principle. We deem the tribunal’s factual findings conclusive if they are supported by competent material, and substantial evidence on the whole record.” *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008) (internal citations and quotations omitted). “But when statutory interpretation is involved, this Court reviews the tribunal’s decision de novo.” *Id.* “[S]tatutes exempting persons or property from taxation must be narrowly construed in favor of the taxing authority.” *Id.* When a petitioner attempts to establish membership in an already exempt class, the preponderance-of-the-evidence standard applies. *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 493; 644 NW2d 47 (2002).

## II. MICHIGAN CONSTITUTION

Const 1963, art 9, § 4 provides that “[p]roperty owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes.” This Court has “construed § 4 in view of the official record of the 1961 Constitutional Convention and concluded that the framers of the Constitution intended to adopt and retain existing statutory limitations on exemptions as set forth in [MCL 211.7].” *St Paul Lutheran Church v City of Riverview*, 165 Mich App 155, 160; 418 NW2d 412 (1987), citing *American Youth Foundation v Benona Twp*, 8 Mich App 521; 154 NW2d 554 (1967). In 1980, the Legislature rewrote MCL 211.7, which originally contained 13 subsections pertaining to tax exemptions, and distributed the exemptions across several self-contained sections. See MCL 211.7a to MCL 211.7ss; MCL 211.7, as amended by 1980 PA 142. Based on this Court’s opinion in *St Paul Lutheran Church*, the general exemption in the Michigan Constitution for property owned and occupied by nonprofit religious organizations is “defined by law” in the exemption provisions of the General Property Tax Act, MCL 211.1 *et seq.* (“GPTA”).

## III. MCL 211.7o

“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” the GPTA. MCL 211.7o(1); *Liberty Hill Housing Corp*, 480 Mich at 50 n 3. To be eligible for a tax exemption under MCL 211.7o(1), a claimant must meet three requirements: (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 buildings and other property must be “occupied by the claimant solely for the purposes for which it was incorporated.” *Liberty Hill Housing Corp*, 480 Mich at 50, quoting *Wexford Med Group v City of Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006).

Petitioner argues that the MTT erred when it concluded that petitioner did not meet the second requirement, that the exemption claimant is a “nonprofit charitable institution.”<sup>3</sup> In determining whether an entity is a “charitable institution,” a court may consider the following factors:

- (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. [*Wexford Med Group*, 474 Mich at 215.]

Our Supreme Court adopted in 1982, and reaffirmed in 2006, the following definition of “charity”:

Charity 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. [*Id.* at 214, quoting *Retirement Homes of Detroit Annual Conference of United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982) (internal punctuation omitted).]

The MTT found that petitioner was not a charitable institution because, while the advancement of religion may be considered charity, the subject property was “not open to the

---

<sup>3</sup> The MTT concluded that petitioner satisfied the first and third requirements.

general public and only benefits a very few select individuals rather than society in general,” referring to the third factor concerning charitable institutions listed in *Wexford Med Group*. In that case, our Supreme Court stated:

[i]n a general sense, there can be no restrictions on those who are afforded the benefit of the institution’s charitable deeds. This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought. Rather, a charitable institution can exist to serve a particular group or type of person, but the charitable institution cannot discriminate within that group. [*Wexford Med Group*, 474 Mich at 213.]

While the final opinion and judgment states that petitioner “failed to meet the second prong in *Liberty Hill Housing Corp.*,” the opinion’s analysis of MCL 211.7o demonstrates that the MTT’s disposition with respect to that exemption was based on the third factor, since petitioner’s ineligibility for an exemption under MCL 211.7o was based on the exclusivity of the seminary program and the use of the subject property by “a very few select individuals.” But because the *Wexford Med Group* factors are designed to scrutinize the would-be nonprofit charitable institution as a whole and not merely its constituent programs, a proper examination of the third factor would have sought to determine whether petitioner overall, not only the seminary program, discriminated in the distribution of its charity.

The answer to that question is found, in part, by consideration of the second *Wexford Med Group* factor, that a “‘charitable institution’ is one that is organized chiefly, if not solely, for charity,” *Wexford Med Group*, 474 Mich at 215. In this case, the testimony of Rabbi Yelen precludes us from a finding that petitioner is so organized. As previously stated, Rabbi Yelen testified that petitioner “teaches people of the Jewish faith . . . how to live through . . . pray[er] services, study services, charitable services, all the ways that we have of the Jewish way of life.” Although approximately 30 families belong to the congregation, none of the seminary students, who must apply and be accepted to the program, are drawn from the congregation. Rather than operating “for the benefit of an indefinite number of persons,” *Wexford Med Group*, 474 Mich at 214, as the Michigan Supreme Court has defined “charity,” petitioner was organized to serve the finite membership of its congregation, which, at the time of the hearing, was 30 families.<sup>4</sup>

While religious congregations routinely raise money and perform services for the benefit of surrounding communities outside of their membership, and Rabbi Yelen stated in an affidavit that petitioner “minister[s] to the sick and infirm through home and hospital visits,” those activities were not described in the tribunal record sufficiently to satisfy petitioner’s burden of demonstrating its entitlement to an exemption under MCL 211.7o(1) by a preponderance of the

---

<sup>4</sup> Petitioner’s articles of incorporation state no particular purpose for formation. Yelen’s affidavit states that petitioner “provides religious[-]related services and education in accordance with the Orthodox Jewish Tradition, including but not limited to” (1) the provision of religious services, (2) classes and lectures in religious, ethics, and historical texts, (3) youth groups, (4) ministering to the sick and infirm through home and hospital visits, and (5) religious education and seminary training.

evidence. *ProMed Healthcare*, 249 Mich App at 493. The only specific evidence concerning community service is Rabbi Yelen’s testimony regarding the in-home services to new families provided by the seminary students, most of whom come from outside of Michigan, and who are not members of the congregation. Therefore, because petitioner failed to show by the preponderance of the evidence that it is a charitable institution, i.e., that it was “organized chiefly, if not solely, for charity,” *Wexford Med Group*, 474 Mich at 215, the subject property was not eligible for a tax exemption under MCL 211.7o. *ProMed Healthcare*, 249 Mich App at 493.

#### IV. MCL 211.7s

MCL 211.7s provides:

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 [sic] 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.

This Court has interpreted MCL 211.7s to exempt a petitioner’s property from taxation if (1) the petitioner is a religious society and (2) “the property is used predominantly for religious services or for teaching the religious truths and beliefs of the society.” *Institute in Basic Life Principles, Inc v Watersmeet Twp*, 217 Mich App 7, 13; 551 NW2d 199 (1996).

For the purposes of this statute, a “parsonage” is “a residence of the pastor or his assistants who are ordained teaching ministers for a particular congregation.” *St John’s Evangelical Lutheran Church v City of Bay City*, 114 Mich App 616, 624-625; 319 NW2d 378 (1982). Petitioner argues that this Court should redefine parsonage to include the residence of nonordained seminary students because the Legislature intended the parsonage exception to apply to the subject property. In the absence of any authority to support that argument, we conclude that the definition stated in *St John’s Evangelical Lutheran Church*, 114 Mich App at 624-625, is persuasive and controls. Because the parties do not dispute that no rabbi or other teaching minister lives at the subject property, the property is not eligible for an exemption as a parsonage.

The MTT denied an exemption under MCL 211.7s because “the teaching of religious truths and beliefs of Petitioner are ancillary to the residential function rather than vice versa,” and, therefore, “the subject property is not used *predominantly* for religious services or for the teaching of the religious truths and beliefs of the society.” (Emphasis in original.) In *Mich Christian Campus Ministries, Inc v City of Mount Pleasant*, 110 Mich App 787; 314 NW2d 482 (1981), the petitioner was a nonprofit corporation whose stated purposes were to “provide each campus community with a stimulus for spiritual growth through creative Bible study, interpersonal relationships, counseling resources and the opportunity for selected students to live together in a Christian atmosphere.” *Id.* at 790. The petitioner owned a three-story building near Central Michigan University, rented the bedrooms to 10 university students “based upon ability to pay,” and used the campus house for several purposes, including “the religious counseling

previously mentioned, fellowship (group singing, prayer and Bible study), religious teaching, sermons and sacraments.” *Id.* at 790-791. The student residents assisted the campus minister in conducting those services and activities. *Id.* at 791. Applying MCL 211.7, as amended by 1980 PA 142,<sup>5</sup> this Court affirmed the MTT’s denial of an exemption on the basis that “the substance of the campus house arrangement was to provide private living quarters for selected students.” *Mich Christian Campus Ministries, Inc*, 110 Mich App at 792. “The exemption was denied despite the fact that the house was used for functions akin to those of a house of worship, because such functions were determined to be ancillary to the residential function rather than vice [sic] versa.” *Id.* at 792-793.

We conclude that the subject property is not eligible for a tax exemption as a house of public worship because, as in *Mich Christian Campus Ministries, Inc*, it is used primarily as a residence. Although Rabbi Yelen testified that some classes are held at the house, he said that most classes are held at petitioner’s synagogue. From Rabbi Yelen’s previously disclosed testimony we glean that the seminary students begin their days with breakfast at the house and prayer at the synagogue at 8:45 a.m. They remain at the synagogue for most of the day and return to the house at 6:00 p.m. for dinner and a class at 7:45 p.m., also at the house. The students observe religious services at the house on Friday nights, and at the synagogue on other days.

MCL 211.7s, which must be strictly construed in favor of the taxing authority, *Institute in Basic Life Principles, Inc*, 217 Mich App at 12, only allows for an exemption when the property is “predominantly” used for holding religious services or teaching religious truths and beliefs. Accordingly, the issue is not whether observances take place, but whether *teaching* is the *predominant* function of the subject property. Because the vast majority of the students’ classes and religious services take place at the off-site synagogue, the subject property is not used “predominantly for religious services or for teaching the religious truths and beliefs” of petitioner, MCL 211.7s, and, therefore, it is not eligible for a tax exemption as a house of public worship.

---

<sup>5</sup> Before the 1980 amendment, MCL 211.7(e) read:

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 such. Houses of public worship includes buildings or other facilities owned by a religious society and used exclusively for religious services or for teaching the religious truths and beliefs of the society.

As this Court explained, the amendment “require[d] that the use of property for religious services or teaching be the predominant rather than the exclusive use” and “prevent[ed] a church from losing its tax-exempt status merely because it is used for social purposes incidental to its primary function.” *Mich Christian Campus Ministries, Inc*, 110 Mich App at 792.

Affirmed. No costs are awarded. MCR 7.219(A).

/s/ Christopher M. Murray  
/s/ Peter D. O'Connell  
/s/ Stephen L. Borrello