

STATE OF MICHIGAN
COURT OF APPEALS

MT. ZION TEMPLE,

Petitioner-Appellant,

v

WATERFORD TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED

March 3, 1998

No. 197707

Michigan Tax Tribunal

LC No. 00214501

Before: Sawyer, P.J., and Wahls and Reilly, JJ.

PER CURIAM.

Petitioner appeals as of right from the Tax Tribunal's opinion and judgment denying its petition for exemption from 1994 and 1996 ad valorem property taxes, and the tribunal's determination that it did not have jurisdiction to adjudicate petitioner's claim of exemption from 1995 property taxes. We affirm.

Petitioner is a nondenominational church that purchased a health club facility in Waterford Township and named it Oakland Christian Association (OCA). Petitioner's pastor, Loren Covarrubias, testified that one of the primary purposes in purchasing the facility was to attract and serve the youth of the community, "share the gospel" with them and give them "a living demonstration of Jesus Christ through serving." Petitioner spent over half a million dollars renovating the facility, which consists of four tennis courts, two basketball courts, five racquetball courts, three wallyball courts, two aerobic exercise rooms, a sauna, locker rooms, showers, a meeting room, offices, a lounge area, snack bar, game room and billiard room. OCA provided a Saturday night "teen hang-out" program for a \$2.00 fee or for free if the teens attended a thirty-minute devotional service prior to the hang out. OCA also provided free membership to Waterford Township senior citizens. Petitioner's members received free membership at the club. The club's facilities could be used by others by either paying an hourly fee for various activities, or by purchasing a sponsorship. OCA operated at a loss of approximately \$100,000 in 1994, which was subsidized by petitioner.

Petitioner first argues that the Tax Tribunal erred in determining that it was not exempt from paying property taxes. This Court generally defers to the decisions of the Tax Tribunal, and judicial

review is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle. *OCLC Online Computer Library Center, Inc v Battle Creek*, 224 Mich App 608, 611; ___ NW2d ___ (1997).

MCL 211.7o; MSA 7.7(4l) provided in pertinent part:

Real estate or personal property owned and occupied by nonprofit charitable institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated; . . . is exempt from taxation under this act.¹

Petitioner must prove by a preponderance of the evidence that it is entitled to a property tax exemption. *OCLC, supra*, at 611. In determining whether petitioner met this burden, tax exemption statutes must be strictly construed in favor of the taxing unit. *Id.* However, this Court will not uphold a strained construction adverse to the Legislature's intent. *Id.*

The following test, although couched in terms of real estate, applies equally in determining whether a party qualifies for a personal property exemption if the references to realty are treated as references to personalty:

- (1) The real estate must be owned and occupied by the exemption claimant;
- (2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution;
- (3) The claimant must have been incorporated under the laws of this State;
- (4) The exemption exists only when the building and other property thereon are occupied by the claimant solely for the purpose for which it was incorporated. [*Id.* at 612.]

The third factor is no longer required, having been found to be unconstitutional. *Id.* For a proper test of what is a charitable institution, this Court looks to 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.” [*Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 671; 378 NW2d 737 (1985) (*MUCC*), quoting *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 *Retirement Homes*).] [*OCLC* at 614-615. Emphasis omitted.]

Thus, to qualify as a charitable institution, petitioner's activities, taken as a whole, must constitute a charitable gift for the benefit of the general public without restriction for the benefit of an indefinite number of persons. *Id.* at 615. The mere fact that petitioner charges for use of its services does not negate its status as a charitable institution. *Id.* at 615 n 2.

We believe that petitioner met the first and fourth factors of the requirement to qualify for an exemption, but not the second factor because OCA did not provide a gift for the benefit of the general public.² Certain members of Waterford Township receive the services or benefits of OCA for free or at a nominal cost, while others do not. OCA provides free Saturday night activities for teens who attend the devotional service prior to the hang-out, and charges \$2.00 to other teens. It provides free memberships to senior citizens of Waterford, but charges \$75 per year to outside residents. Free membership at OCA is also provided to petitioner's members. However, other residents in Waterford Township apparently pay the going commercial rate to use the facilities of OCA. There is no indication that members of the community who cannot afford to pay for recreational services can receive a discount. The only evidence presented was that church groups and the school district can receive discounts. Although OCA has operated at a loss, it charges a number of its users commercial fees. Pastor Covarrubias testified that the teenage and senior citizen programs are essentially subsidized by the adults who use the facility. Thus, OCA only provides free or discounted services to certain members of the community, while others are required to pay the same price that they would at another health club. Hence, the OCA does not provide a gift for the benefit of the public without restriction for the benefit of an indefinite number of persons. See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661; 378 NW2d 737 (1985). Accordingly, the Tax Tribunal did not err in applying the law and properly denied petitioner's petition for a tax exemption.

Petitioner also argues that the Tax Tribunal erroneously determined that the tribunal did not have jurisdiction to adjudicate whether petitioner was exempt from paying 1995 property taxes.

MCL 205.735; MSA 7.650(35) provides in relevant part:

(1) A proceeding before the tribunal is original and independent and is considered de novo. For an assessment dispute as to the valuation of the property or where an exemption is claimed, . . . the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (2) . . .

(2) The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved. . . .

(3) The petition or answer may be amended at any time by leave of the tribunal and in compliance with its rules. If a tax was paid while the determination of the right to the tax is pending before the tribunal, the taxpayer may amend his or her petition to seek refund of that tax.

The plain language of § 35 requires that the assessment be protested before the board of review before the tribunal can acquire jurisdiction. *Covert Twp v Consumers Power Co*, 217 Mich App 352, 355; 551 NW2d 464 (1996).

There is no dispute that petitioner did not file a petition to request a determination that it was exempt from 1995 taxes, nor did it attempt to amend its petition to include the 1995 tax year. Consequently, the condition precedent to the Tax Tribunal's exercise of its jurisdiction to review the assessment of the property was not met, and the tribunal did not have jurisdiction over the 1995 tax assessment. *Id.* at 356; cf. *Little Friends v Escanaba*, 138 Mich App 302, 310-311; 360 NW2d 602 (1984). (This Court held that although the petitioner did not file a petition in accordance with MCL 205.735(1); MSA 7.650(35)(1), the Tax Tribunal had jurisdiction to consider its tax exemption claim because the petitioner amended its petition to include the tax year at issue.)

Petitioner claims that the Tax Tribunal's decision whether to exempt it from property taxes automatically applies to the year it filed the petition and all subsequent years.³ We note that at the time petitioner filed its petition in June 1994, MCL 205.737(5); MSA 7.650(37)(5) provided:

If the residential property and small claims division of the tribunal has jurisdiction over a petition, 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 appeal at the time of the hearing on the petition.

There is no indication that petitioner's claim was heard by the residential property or small claims division of the tribunal. Therefore, we do not believe that MCL 205.737(5); MSA 7.650(37)(5) applied in the present case to give the tribunal jurisdiction over the 1995 tax year.

We note that MCL 205.737(5); MSA 7.650(37)(5) was subsequently amended by 1996 PA 505, effective January 9, 1997 and reads in pertinent part:

(5) A motion to amend a petition to add subsequent years is not necessary in the following circumstances:

(a) For petitions filed after December 31, 1987, if 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 appeal at the time of the hearing on the petition.

This section plainly indicates that the Tax Tribunal has jurisdiction to adjudicate matters of exemption for years subsequent to the year the petition was filed, in which there was an assessment, without the petitioner filing any other petitions or amendments. However, because this provision was not in effect at the time petitioner filed the instant claim, it is not applicable. Accordingly, the Tax Tribunal properly

determined that it did not have jurisdiction over petitioner's claim that it was exempt from property taxes for the year 1995.

Affirmed.

/s/ David H. Sawyer
/s/ Myron H. Wahls
/s/ Maureen Pulte Reilly

¹ This statute was amended, effective December 1996, to state:

(1) Property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.

² The Tax Tribunal stated in its opinion and judgment, that petitioner "clearly meets the requirements" of the first and second factors of the test to qualify for an exemption, but that it did not meet the requirements of the fourth factor. Although the parties do not contest the tribunal's analysis in this regard, we believe that the tribunal mistakenly thought that it was applying the fourth factor of the test when it was in fact applying the second factor, because the tribunal based its decision on an analysis of whether petitioner was a charitable institution. The analysis of whether an entity is entitled to a tax exemption pursuant to whether it meets the definition of charity is conducted pursuant to the second factor of the exemption test. See *OCLC, supra*; *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661; 378 NW2d 737 (1985). Both parties appear to acknowledge that the appropriate analysis to apply in this case is whether petitioner met the definition of charity. Therefore, although the tribunal mistakenly stated that it was applying the fourth factor in its determination, we believe that it actually correctly applied the second factor.

³ Petitioner asserts that the determination whether it is exempt from paying property taxes does not vary from year to year. Petitioner cites MCL 205.737(4); MSA 7.650(37)(4), which stated in relevant part:

If the taxpayer paid additional taxes as a result of the unlawful assessments on the same property after filing the petition, or if in subsequent years an unlawful assessment is made against the same property, the taxpayer, not later than the filing deadline prescribed in section 35(2), . . . *may* amend the petition to join all of the claims for a determination of the property's taxable value, state equalized valuation, or exempt status *and* for a refund of payments based on the unlawful assessments. [Emphasis added.]

Petitioner claims that this provision indicates that it only needs to amend its petition to include subsequent tax years when it has already paid taxes and is seeking a refund. Thus, petitioner implies that it did not need to amend its petition in order for the tribunal to have jurisdiction over its claim of

exemption for the year 1995. Petitioner provided no authority to support this claim, and we do not believe that the argument has any merit.