STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN LABORERS' TRAINING & APPRENTICESHIP FUND,

Petitioner-Appellant,

v

TOWNSHIP OF BREITUNG,

Respondent-Appellee.

UNPUBLISHED
October 23, 2012

No. 303723
Tax Tribunal
LC No. 00-307588

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's order finding that petitioner is not an educational institution under MCL 211.7n, and accordingly denying petitioner tax-exempt status. Because we conclude that the Tax Tribunal correctly held that petitioner does not qualify as an educational institution under the statute, we affirm.

Petitioner is an unincorporated, irrevocable trust created under Michigan law in 1972 for the stated purpose of "defraying costs of training apprentices, and upgrading and retraining journeymen working under the jurisdiction of the collective bargaining agreement(s) which created [petitioner]." At issue in this case is property owned by petitioner consisting of "numerous buildings, storage facilities, and an adjacent parking lot" and classified as commercial. Petitioner uses this property for its apprenticeship program. As stated by the Tax Tribunal, this program:

> includes hours of diverse work and training. Training consists of classroom and hands-on-training, both in school and in the field, with the students who complete all of the requirements being classified as journeymen. [Petitioner] provides training for craft laborers and retraining of journeymen. [Petitioner] has an Articulation Agreement with Baker College and some courses taken at [Petitioner] are given college credit toward a degree from Baker College.

Petitioner appealed its classification for the tax years 2004, 2005, and 2006, during which petitioner owned and occupied the property at issue. Petitioner argued that it is exempt from Michigan's ad valorem property tax under MCL 211.7n as an educational institution. Following a hearing, the Tax Tribunal issued its opinion and judgment concluding that petitioner does not

qualify for the tax exemption because it is not an educational institution as defined by MCL 211.7n and because it is not incorporated.

On appeal, petitioner first argues that the Tax Tribunal erred in concluding it does not qualify as an educational institution.

Where fraud is not claimed, we review the Tax Tribunal's decision only for misapplication of the law or adoption of a wrong principle. *Wexford Med Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006). We are bound by the Tax Tribunal's factual determinations that are supported by competent, material, and substantial evidence on the whole record. *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 388; 576 NW2d 667 (1998). Factual findings that are not supported by competent, material, and substantial evidence on the whole record constitute an error of law. *Id.* Substantial evidence is evidence that a "reasonable mind would accept as sufficient to support a conclusion, and it may be substantially less than a preponderance." *Inter Coop Council v Dep't of Treasury*, 257 Mich App 219, 222; 668 NW2d 181 (2003). We will defer "to the tribunal's interpretation of a statute that it is charged with administering and enforcing." *Id.* Final agency determinations are reviewed on the basis of the entire record, and "where there is sufficient evidence, a reviewing court must not substitute its discretion for that of the tribunal's even if the court might have reached a different result." *Stege v Dep't of Treasury*, 252 Mich App 183, 188; 651 NW2d 164 (2002).

In Michigan, "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. A petitioner bears the burden of proving it is entitled to a tax exemption. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 492; 644 NW2d 47 (2002). "[T]he preponderance of the evidence standard applies when a petitioner attempts to establish membership in an already exempt class." *Id.* at 494-495. We construe tax exemption statutes in favor of the taxing government. *OCLC Online Computer Library Ctr, Inc v Battle Creek*, 224 Mich App 608, 611-612; 569 NW2d 676 (1997).

Petitioner argues it is tax-exempt as an "educational institution" pursuant to MCL 211.7n, which provides:

> Real estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific 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 the institutions were incorporated is exempt from taxation under this act. In addition, real estate or personal property owned and occupied by a nonprofit organization organized under the laws of this state devoted exclusively to fostering the development of literature, music, painting, or sculpture which substantially enhances the cultural environment of a community as a whole, is available to the general public on a regular basis, and is occupied by it solely for the purposes for which the organization was incorporated is exempt from taxation under this act.

In *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944), the Michigan Supreme Court interpreted MCL 211.7n and set forth four elements that must be satisfied in order to qualify for tax-exempt status:

> (1) The real estate must be owned and occupied by the exemption claimant;
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> (2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution;
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> (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.

In order to qualify for the exemption as an educational institution, an institution must also "fit into the general scheme of education provided by the state and supported by public taxation," and the institution must make "a substantial contribution to the relief of the burden of government" in regard to the education of the public. *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 755-756; 298 NW2d 422 (1980).[1]

In *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 737 (1948), the Court considered whether the Detroit Commercial College was tax exempt as an educational institution. The Detroit Commercial College offered "a two-year course in specialized educational training preparatory to the taking of a position in the business world." *Id.* at 146. The school prepared students to enter the business world but did not "furnish certificates for advanced credit in any junior or preparatory college or other educational institution." *Id.* The Court held that the Detroit Commercial College did not fit into the general scheme of education provided by the state and supported by public taxation because it was "a specialized school operated for the purpose of training its students to enter into specialized fields of employment." *Id.* at 153.

Petitioner in this case can be similarly categorized. The Tax Tribunal concluded that petitioner in this case provides an apprenticeship program that includes training in the classroom and in the field for craft laborers. Students who complete the program become classified as

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[1] We note that MCL 211.7n simply refers to "educational . . . institutions," absent any restrictive language limiting institutions to only those that fit into the general scheme of education provided by the state and supported by tax dollars and that make a substantial contribution to relieving the government's burden. We are, however, controlled by binding Supreme Court precedent to employ this definition. Our Supreme Court has emphasized that "a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). The caselaw interpretation of "educational institutions" would appear to run afoul of this admonition. The Supreme Court may wish to revisit the construction of the statutory language.

journeymen. Petitioner also retrains journeymen. Baker College awards college credit to students who complete some of petitioner's courses, but does not award any degree for completion of petitioner's program alone. Petitioner's purpose is "to improve and expand the competitive position of employers and union laborers." The Tax Tribunal's factual findings in this regard are supported by the record. Thus, petitioner provides education and training to individuals who wish to work in the field of construction craft labor, and is a specialized school operated for the purpose of training its students to enter a specialized field of employment and not an educational institution just like the petitioner in *Detroit Commercial College*. Accordingly, petitioner does not fit into the "general scheme of education provided by the state and supported by public taxation." *Ladies Literary Club*, 409 Mich at 755.

Similarly, it cannot be said that petitioner makes "a substantial contribution to the relief of the burden of government" in regard to the education of the public. *Id.* at 755-756. In *David Walcott Kendall Mem Sch v Grand Rapids*, 11 Mich App 231, 240; 160 NW2d 778 (1968), this Court explained that when determining whether an institution is an educational institution, courts must consider: "If the particular institution in issue were not in existence, then would, and could, a substantial portion of the student body who now attend that school instead attend a State-supported college or university to continue their advanced education in that same major field of study?" This test was adopted in *Ladies Literary Club*, 409 Mich at 755-756.

In this case, the Tax Tribunal concluded that a substantial portion of the student body currently enrolled in petitioner's program would be unable to attend a state supported college or university to continue their education in the same major field of study. The Tax Tribunal noted that while some of petitioner's courses may be transferred for credit at Baker College, petitioner failed to provide any evidence that its major fields of study are offered by state supported colleges or universities. The record in this case indicates that there is no state supported program whereby participants can become apprentices or journeymen. The Tax Tribunal also noted that the evidence demonstrated that only 36 of the approximate 7,000 people trained by petitioner transferred their credits to Baker College. Thus, the Tax Tribunal found that "[e]ven if Baker College were a state-supported college, 36 students over a period of years would hardly decrease the state's burden." The Tax Tribunal further noted that the Legislature has not mandated vocational training, and petitioner failed to point to any constitutional or statutory provision requiring the state to support vocational training. In *Mich Conservation Clubs v Lansing Twp*, 423 Mich 661, 669; 378 NW2d 737 (1985), the Court held that conservation education did not fit into the general scheme of education provided by the state because the state did not mandate conservation education.

Accordingly, we conclude that the Tax Tribunal's factual findings were supported by the record, and its application of those facts to the law was not erroneous. Therefore, we affirm the Tax Tribunal's determination that petitioner does not qualify as an educational institution under MCL 211.7n because it does not "fit into the general scheme of education provided by the state and supported by public taxation," and it does not make "a substantial contribution to the relief of the burden of government." *Ladies Literary Club*, 409 Mich at 755-756.

Petitioner also argues that the Tax Tribunal's conclusion that incorporation is required to satisfy the statutory tax exemption set forth in MCL 211.7n is erroneous, or alternatively, that any incorporation requirement is unconstitutional. Because we have concluded that petitioner is

not an educational institution and therefore cannot meet the requirements of the exemption, we need not address these additional arguments.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Joel P. Hoekstra