STATE OF MICHIGAN

COURT OF APPEALS

BUILDING CORPORATION OF THE DETROIT ELECTRICAL INDUSTRY APPRENTICE AND JOURNEYMAN TRAINING FUND, Petitioner-Appellant,	UNPUBLISHED July 24, 2018
v	No. 339292 Tax Tribunal
CITY OF WARREN, Respondent-Appellee.	LC No. 2016-000831

Before: RONAYNE KRAUSE, P.J., and GLEICHER and LETICA, JJ.

PER CURIAM.

Petitioner, Building Corporation of the Detroit Electrical Industry Apprentice and Journeyman Training Fund (Building Corporation), appeals as of right the Michigan Tax Tribunal's opinion and order granting reconsideration and summary disposition in favor of respondent. Petitioner contends on appeal that the tribunal erred in determining that petitioner and its parent trust, the Apprentice and Journeyman Training Trust of the Electrical Industry, Detroit, Michigan (the Journeyman Trust), were separate entities for tax exemption purposes such that the Journeyman Trust's tax-exempt status could not pass through to real property owned by petitioner. We affirm.

Petitioner Building Corporation describes itself as "a title holding corporation for" the Journeyman Trust. The Journeyman Trust was established in 1965 for the purpose of providing training and instruction to apprentice and journeymen electricians, and it is "a 501(c)(3) organization and is registered and, operates under the regulatory supervision of, the United States Department of Labor's Office of Apprenticeship." Petitioner was established in 2003, and it owns the real property that the Journeyman Trust occupies and uses as its educational facility. Respondent determined in 2004 that most of petitioner's property was exempt from taxation as a nonprofit educational institution pursuant to MCL 211.7n; however, in 2016, respondent determined that the property did not qualify for the exemption. Petitioner sought a determination in the Michigan Tax Tribunal that it was entitled to the exemption. In its final opinion and judgment, the Tribunal held that petitioner did not meet the requirements of MCL 211.7n.

"This Court's review of a decision by the Tax Tribunal is limited." *Trinity Health-Warde Lab, LLC v Charter Twp of Pittsfield*, 317 Mich App 629, 632; 895 NW2d 226 (2016). "Absent

a claim of fraud, [an appellate court] reviews decisions from the Tax tribunal for the misapplication of law or the adoption of a wrong legal principle." *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 70; 894 NW2d 535 (2017). This Court reviews factual findings of the tribunal to determine whether they are supported by "competent, material, and substantial evidence on the whole record," and reviews "de novo the tribunal's interpretation of a tax statute." *Id*. (quotation marks and citations omitted). The Tax Tribunal's interpretation of a statute within its purview is entitled to deference, although that deference is not absolute. *Wexford Med Group v City of Cadillac*, 474 Mich 192, 221; 713 NW2d 734 (2006). We review motions for summary disposition de novo, and under MCR 2.116(C)(10), summary disposition should be granted if the evidence, when viewed in the light most favorable to the nonmoving party, does not establish a genuine question of material fact. *Maiden v Rozwood*, 461 Mich 109, 118-120; 597 NW2d 817 (1999).

"The General Property Tax Act (the Act) provides that 'all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.'" *Trinity Health*, 317 Mich App at 633, quoting MCL 211.1. The entirety of MCL 211.7n states:

> 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.

Consequently, there are two exemptions: one for certain institutions "incorporated under the laws of this state" that includes educational institutions, and the other for certain institutions "organized under the laws of this state" that is limited to essentially artistic institutions.

There are four elements that must be satisfied in order for a property to qualify for the first tax exemption under the statute:

> (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. [*Engineering Society of Detroit v City of Detroit*, 308 Mich 539, 550; 14 NW 79 (1944).]

"This Court has historically required that tax exemptions be narrowly and strictly construed in favor of the government." *SBC Health*, 500 Mich at 71. "The taxpayer has the burden of showing entitlement to exemption." *Power v Dep't of Treasury*, 301 Mich App 226, 233; 835 NW2d 622 (2013) (citation omitted).

Initially, although the Journeyman Trust is not the actual claimant in this matter, it is a relevant party. Nonetheless, the Journeyman Trust is not *incorporated* under the laws of Michigan, or indeed *incorporated* at all. Rather, the Journeyman Trust appears to be precisely what its name would indicate: a trust, not any manner of corporate entity. Consequently, the Journeyman Trust cannot itself be entitled to the first exemption under MCL 211.7n. Although it is at least arguably an "organization *organized* under the laws of this state," it is not dedicated to "literature, music, painting, or sculpture," so it also cannot be entitled to the second exemption under MCL 211.7n. The distinction between entities *incorporated* and entities *organized* is presumed to be a significant and intentional dichotomy crafted by the Legislature. *City of Rockford v 63rd Dist Court*, 286 Mich App 624, 627; 781 NW2d 145 (2009).

Petitioner also fails to satisfy critical elements of either exemption. Like the Journeyman Trust, it is not dedicated to "literature, music, painting, or sculpture." It *is* incorporated under the laws of Michigan, and there is no dispute that it owns the relevant property. However, petitioner is not itself a "theater, library, educational, or scientific institution," and it does not itself occupy the property. Rather, it is essentially nothing more than a shell corporation that does nothing more than hold title to the real property of the Journeyman Trust, to collect income from the property, and to turn that income over in its entirety to the trust. The Journeyman Trust is the entity that occupies the property and engages in educational activities on the property. Consequently, petitioner would appear not to be entitled to any exemption under MCL 211.7n.

Petitioner argues, however, that it and the Journeyman Trust should be deemed a single entity, essentially combining petitioner's ownership of the property and incorporation under Michigan law, with the Journeyman Trust's occupancy of the property and nature as an educational institution. This is an interesting argument. Our Supreme Court has repeatedly held that under some circumstances, the technically legal owner of property and the functionally effective owner of property can be deemed the same for tax exemption purposes even if they are otherwise distinct entities. See *Engineering Soc*, 308 Mich at 550-551; and *City of Ann Arbor v University Cellar, Inc*, 401 Mich 279, 285-288; 258 NW2d 1 (1977); see also *Nat'l Music Camp v Green Lake Twp*, 76 Mich App 608, 613-615; 257 NW2d 188 (1977). These holdings are consistent with the longstanding legal principle that Michigan jurisprudence generally avoids elevating formalities over substance. See *Wilcox v Moore*, 354 Mich 499, 504; 93 NW2d 288 (1958). None of those cases, however, are entirely on point.

In *Engineering Soc*, the "naked title" to the property was held by a foundation "as trustee for" the petitioner educational institution, which held "equitable title" to and occupied the property. *Engineering Soc*, 308 Mich App at 543, 550. Notably, the Court relied on the fact that under the then-existing predecessor statute MCL 211.3, as is the case under the present statute, real estate taxes could be assessed to either the owner or the occupant of the property. However, title to the property here was simply conveyed outright. Additionally, the Court in *Engineering Soc* concluded that the petitioner in that case was *itself* an educational institution within the meaning of the statute; it found the exemption unavailable because the premises were used for

too many other unrelated purposes. *Id*. at 551-553. The reversal of roles aside, the Journeyman Trust is not, itself, an incorporated educational institution such that, as the Court did in *Engineering Soc*, technicalities of ownership might be overlooked.

In contrast, *Nat'l Music Camp* involved two different undisputed educational institutions with technically distinct corporate existences but highly interlocked directorates and purposes that traded off usage of the same property, which just happened to be owned by only one of them. *Nat'l Music Camp*, 76 Mich App at 609-610, 613-614. This Court held that the statute did not require occupancy by one to the exclusion of the other, especially where the two entities differed in little more than name, and, again, each was otherwise a qualified educational institution under the statute. *Id*. at 611-615. In other words, each of the entities would have been tax-exempt. See *Trinity Health*, 317 Mich App at 636. Again, here *neither* petitioner nor the Journeyman Trust would otherwise constitute a qualified educational institution, and rather than being essentially identical reemplementations of each other, they are clearly distinct entities.

Finally, in *University Cellar*, our Supreme Court did not actually decide anything of relevance to this matter, but it did speculate that there was at least some possibility that, as petitioner attempts to do here, a tax-exempt entity could "pass through" that status to another entity. *University Cellar*, 401 Mich at 285. In that case, the claimant was a bookstore established by the Regents of the University of Michigan but run essentially independently. *Id*. at 286-288. Leaving aside whether such a "pass through" was permissible, and we note that *Engineering Soc* strongly suggests it is, once again, the University itself in *University Cellar* would have been a tax-exempt entity. The Journeyman Trust would not be tax-exempt, even if it owned the premises outright.

The ramifications of the above cases, taken together, are simple: technicalities of legal ownership or occupancy might be overlooked under some circumstances, where there is for some reason little practical distinction between the owner and the occupant even if they are strictly distinct legal entities. None of the above cases suggest, however, that one can combine traits of the two entities into a fictional legal homunculus. In each of the above cases, the non-owner entity would have been tax-exempt had it been an owner. The Journeyman Trust, not being incorporated under the laws of this state, could not avail itself of the exemption even if it did own the premises. Consequently, we accept that any tax-exempt status of an entity that practically owns and occupies property *can* pass through to the legal owner, but here, there is no tax-exempt status to pass through.

Petitioner also contends that, because it is entitled to federal tax exemptions as a title holding corporate shell, petitioner should also be entitled to Michigan tax exemptions. The existence of a federal statute that exempts petitioner from federal taxation, however, is not a legal basis for exemption under a Michigan statute. That the trustees of the Journeyman Trust strategically chose to incorporate petitioner in such a way that petitioner could not satisfy the elements of MCL 211.7n only evidences the fact that the trustees felt the advantages of incorporating petitioner solely to hold title to the property outweighed the advantages of incorporating petitioner to hold title to the property, occupy the property, and operate the vocational school on the property. See MCL 211.7n. See also *University Cellar*, 401 Mich at 291-292 (explaining that the University made a strategic choice not to exert managerial control

over the bookstore, and to allow the bookstore to retain the benefits of that choice while ignoring the choice for tax purposes "would be to run with the hare and hunt with the hounds").

Affirmed.

/s/ Amy Ronayne Krause
/s/ Elizabeth L. Gleicher
/s/ Anica Letica