

STATE OF MICHIGAN
COURT OF APPEALS

LUTHERAN SOCIAL SERVICES OF
MICHIGAN,

Petitioner-Appellant,

v

BLOOMFIELD TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED
September 11, 2003

No. 239460
Tax Tribunal
LC No. 00-269403

Before: Donofrio, P.J., and Bandstra and O’Connell, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal’s judgment dismissing petitioner’s appeal and affirming the ad valorem real and personal property tax assessments imposed by respondent on Maple Village, an apartment complex for the aged that is owned by petitioner. We affirm.

Petitioner argues that the Tax Tribunal erred in focusing solely on the Maple Village property when making its determination regarding whether petitioner was entitled to a charitable institution exemption for the real and personal property associated with that facility. Petitioner contends that the tribunal should have looked to petitioner’s overall charitable nature and, after doing so, concluded that because revenues generated from Maple Village would benefit petitioner’s other charitable activities, Maple Village was exempt from property taxes under MCL 211.7o(1).¹ We disagree. Judicial review of a determination by the Tax Tribunal is limited to determining whether the tribunal made an error of law or applied a wrong legal principle. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 492; 644 NW2d 47 (2002). Although this Court generally reviews questions of law, such as the interpretation of statutes, de

¹ MCL 211.7o(1):

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 it was incorporated is exempt from the collection of taxes under this act.

novo, we will defer to the Tax Tribunal's interpretation of a statute that it is delegated to administer. *Id.* The factual findings of the tribunal are final, provided that they are supported by competent, material, and substantial evidence on the whole record. *Id.*

Petitioner relies on *Gull Lake Bible Conference Ass'n v Ross Twp*, 351 Mich 269; 88 NW2d 264 (1958), as support for its "large-picture" argument. There, the petitioner applied for a charitable institution exemption for realty holdings, including recreational areas, cottages, and vacant lots, which it claimed were used in connection with its nonprofit purpose of encouraging bible study. *Id.* at 271-272. The Michigan Supreme Court affirmed the trial court's partial refund of taxes to the petitioner, finding that the recreational facilities were necessary to attract participants to petitioner's bible study gatherings and promote the petitioner's purpose. *Id.* at 274-276. However, these recreational areas, cottages, and lots were in close proximity or contiguous to the main area where the petitioner's bible studies were held and were specifically used in conjunction with the petitioner's primary purpose. *Id.* at 272. In contrast, Maple Village is operated as a stand alone facility within petitioner's broader organization and appears to be the only property owned or operated by petitioner in the Bloomfield Township area.

As this Court indicated in *Saginaw Gen Hosp v Saginaw*, 208 Mich App 595, 600; 528 NW2d 805 (1995), the focus is not only whether the organization's activities as a whole warrant exemption, but also whether the primary use of the particular property is reasonably necessary for fulfilling, or is reasonably incident to, the primary purpose of the organization. This rule is consistent with the strict construction we are to afford statutes providing for exemptions from taxes. See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985).² Therefore, there being no dispute as to the charitable nature of petitioner's organization as a whole, we conclude that the Tax Tribunal correctly focused on the circumstances surrounding the specific property at issue, i.e., Maple Village, when determining petitioner's exemption status for that property. Resolution of this case thus turns on whether Maple Village itself meets the criteria for property tax exemption as a charitable institution pursuant to MCL 211.7o(1).

Michigan has a three-part test to determine eligibility for exemption from real property taxes: (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; and (3) the exemption exists only when the buildings and other property thereon are

² Although petitioner is correct that the Court, in *Michigan United Conservation Clubs, supra*, focused on the institution's activities "taken as a whole," the Court there found that the property in question, the claimant's office and library, was not open to the public in general, and therefore, was not exempt. *Id.* at 673-674. Likewise, this Court, in *Institute in Basic Life Principles, Inc v Watersmeet Twp*, 217 Mich App 7, 19; 551 NW2d 199 (1996), focused on whether the property at issue was "used in a manner consistent with the purposes of the owning institution."

occupied by the claimant solely for the purposes for which it was incorporated. *Gull Lake, supra* at 273.³

As noted above, the parties agree that petitioner is a charitable institution. However, respondent questions whether petitioner is “occupying” Maple Village, inasmuch as it is occupied by residents paying substantial rents. Regardless, the tribunal found that Maple Village did not itself qualify as a “charity” because the property did not provide a benefit to the general public, a gift to an indefinite number of persons, or lessening of the government’s burden. See *Holland Homes v Grand Rapids*, 219 Mich App 384, 399; 557 NW2d 118 (1996).

The situation here is analogous to that found in *Holland Homes, supra*, and *Michigan Baptist Homes & Development Co v Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976). Although petitioner does not require a “life fee” as did the petitioners in those cases, petitioner charges a “market rent” designed to pay for overhead and costs, as well as to create a profit that petitioner would use to fund its other activities. In fact, Maple Village had a profit of \$433,257 for the eleven-month period from January 1, 2001, to November 30, 2001. In addition, like the petitioner in *Holland Homes, supra*, petitioner here has a lease agreement with the residents of Maple Village. This Court indicated that where the benefit received is in return for consideration, the benefit is not a gift and cannot be considered charity. *Id.* at 400. Here, testimony offered at the hearing before the tribunal indicated that the residents of Maple Village pay substantial rent, far above that for similar apartment-only dwellings, for their apartments and associated amenities and meals. Petitioner also has the right to evict residents who do not pay their rent, and has no written policy concerning waiving fees or rent for the elderly who cannot afford to pay them. Moreover, similar to the residence involved in *Michigan Baptist Homes, supra* at 671, Maple Village “does not serve the elderly generally, but rather provides an attractive environment for those among the elderly who have the health to enjoy it and can afford to pay for it.” On these facts, we find no error in the tribunal’s conclusion that petitioner was not entitled to the statutory exemption. *ProMed Healthcare, supra*.

We affirm.

/s/ Pat. M. Donofrio
/s/ Richard A. Bandstra
/s/ Peter D. O’Connell

³ In *Chauncey & Marion Deering McCormick Foundation v Wawatam Township*, 186 Mich App 511, 515; 465 NW2d 14 (1990), a fourth part of the test, registration as a Michigan charitable institution, was declared unconstitutional because it denied equal protection to institutions registered out-of-state.