



SMALL BUSINESS & NONPROFIT CLINIC

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Charitable Institutions Must Occupy Property for the Purpose of Ad Valorem Tax Exemption

MCL 211 § 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 that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

The test to determine whether a claimant is entitled to a tax exemption under this statute is as follows:

“(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 exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.” *Wexford Med. Group v. City of Cadillac*, 713 N.W.2d 734, 740 (Mich. 2006). *See also Liberty Hill Hous. Corp. v. City of Livonia*, 746 N.W.2d 282, 286 (Mich. 2008).

This memorandum will only focus on the first prong’s requirement that the property must be “occupied” by the exemption claimant.

I. The Michigan Supreme Court held that in order for a charitable institution to “occupy” property it must at a minimum have a regular physical presence on the property.

In *Liberty Hill*, the Michigan Supreme Court decided on the issue of occupancy. Liberty Hill Housing Corporation was a nonprofit corporation that owned 51 single-family homes in the Detroit area, and leased or rented these homes to disabled and low-income individuals who are referred by its parent corporation, Community Living Services. 746 N.W.2d 282.

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The Court used a dictionary definition of the word “occupy” to decide on legislative intent: to “reside in or on.” *Id.* at 290. The Court then looked to the dictionary definition of “reside:” to dwell permanently or for a considerable time; and to be present habitually; be inherent. *Id.* The Court concluded that to occupy property under MCL 211.7o(1), the charitable institution must at a minimum maintain a regular physical presence on the property. *Id.* The Court held that, although petitioner owned the housing, it leased the housing to others for their own personal use and had no regular physical presence in the housing. *Id.* at 292. The Court’s rationale was that, while Liberty Hill owns the properties, it does not occupy any of them. *Id.* at 285. The exemption is meant for instances where the offices and operations of the non-profit charitable institution exist. *Id.* However, the exemption will apply if a charitable institution's members, employees, or volunteers dwell on the property or are habitually present on the property. *Id.* at 292-93.

II. Vacant lots do not fit within the meaning of the term “occupy” under 211.7o and do not qualify for this ad valorem property tax exemption.

In *Flint West Village Community Development Company v. City of Flint*, 2004 Mich. Tax LEXIS 8, the Michigan Tax Tribunal decided on the applicability of the 211.7o(1) property tax exemption to undeveloped property. Petitioner, Flint West, was a 501(c)(3) nonprofit corporation incorporated for the purposes of providing affordable housing for persons of low and modest income, of erasing community deterioration, for strengthening neighborhood relations and educating residents in home ownership. 2004 Mich. Tax LEXIS 8, 1. Flint West stated that the vacant lots were “land banked” for future development of a recreation area, developing green spaces and parks, as well as future construction of a new school. *Id.* at 5-6. Furthermore, Flint West stated that it maintains the vacant properties by regularly removing trash, mowing, and removing snow. *Id.* at 6.

The Tax Tribunal held that Flint West would not be granted the property tax exemption under 211.7o(1):

Until property is actually “used” versus “held” for future purposes it is simply not sufficient for a charitable organization to own vacant land. At the point in time when the property is developed into a park or a school the property would be granted an exemption. The mere ownership of property by a non-profit organization does not meet the “occupancy” part of the three-prong test for qualifying the properties for exemption. *Id.* at 13-14.