STATE OF MICHIGAN

COURT OF APPEALS

MCLAREN REGIONAL MEDICAL CENTER and MCLAREN MEDICAL MANAGEMENT, INC., Petitioners-Appellants, v CITY OF OWOSSO, Respondent-Appellee.	UNPUBLISHED August 24, 2004 No. 244386 Tax Tribunal LC No. 00-268590
WEXFORD MEDICAL GROUP, Petitioner-Appellant, v CITY OF CADILLAC, Respondent-Appellee.	 No. 250197 Tax Tribunal LC No. 00-276304

Before: Smolenski, P.J., and White and Kelly, JJ.

PER CURIAM.

In Docket No. 244386, petitioners McLaren Regional Medical Center ("MRMC") and McLaren Medical Management, Inc. ("MMM"), appeal as of right from the judgment of the Michigan Tax Tribunal denying their requests for exemption from respondent City of Owosso's ad valorem taxation of their real property under the General Property Tax Act, MCL 211.1 *et seq.*, for tax years 1999 and 2000. Petitioners sought exemption from taxation under MCL 211.7r (hospital or public health purposes) and MCL 211.7o (charitable institution). In Docket No. 250197, petitioner Wexford Medical Group ("Wexford") appeals as of right from the Tax Tribunal's judgment denying its request for exemption from respondent City of Cadillac's ad valorem taxation of Wexford's real and personal property for tax years 2000 and 2001. Wexford also sought exemption under MCL 211.7r and MCL 211.7o, as well as MCL 211.9(a) (personal property of charitable institution exempt). We affirm.

The standard governing our review of a decision of the Tax Tribunal is set forth in *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 491-492; 644 NW2d 47 (2002), quoting *Rose Hill Center, Inc v Holly Twp*, 224 Mich App 28, 31; 568 NW2d 332 (1997):

> 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. Generally, this Court will defer to the Tax Tribunal's interpretation of a statute that it is delegated to administer. The factual findings of the tribunal are final, provided that they are supported by competent, material, and substantial evidence on the whole record. [Citations omitted.]

A petitioner must establish its entitlement to exemption by a preponderance of the evidence. *ProMed Healthcare*, *supra* at 495. Tax exemption statutes are strictly construed in favor of the taxing authority. *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985).

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On appeal, Wexford argues that it was entitled to the charitable institution exemptions under MCL 211.7o and MCL 211.9(a), because its health care services at the subject property are available to the general public without restriction, regardless of the ability to pay, and lessen the burdens of government. We disagree.

As in *ProMed Healthcare, supra* at 500, Wexford failed to present evidence that its "provision of charitable medical care constituted anything more than an incidental part of its operations." Specifically, the evidence indicated that Wexford provided no-cost services to only two people in 2000, and eleven people in 2001, which amounted to writing off $129.13 in 2000, and $2,229.09 in 2001. Thus, the Tax Tribunal properly concluded:

> This case cannot be distinguished from *Pro*[*M*]*ed* [*Healthcare*]. While, unlike *Pro*[*M*]*ed* [*Healthcare*], Petitioner is able to document the number of individuals it has served under its charity care policy, serving 13 patients under that program in [a] two-year time period is not sufficient for a medical practice that has up to 44,000 patient visits per year . . . [and] that Petitioner's current operating budget was approximately $10 million.

Further, the Tax Tribunal did not err in concluding that Wexford's financial losses from maintaining an open-door policy and accepting an unlimited number of Medicare and Medicaid patients did not render it a charitable institution. The services provided to these patients was not charity. Rather, they were performed in exchange for payment from the governmental programs. That the amount of payment under these programs often does not cover the cost of providing the service does not change the character of the service from service in exchange for payment to charity. Further, it is undisputed that Wexford's aim is to become profitable.

Nor did the Tax Tribunal err in rejecting Wexford's argument that it qualified as a charitable institution because it provided health care services in a "health professional shortage area." While Wexford's presence in the community is laudable, as is the presence of other health care professionals, the services were, nevertheless, with the exception of thirteen patients,

performed in exchange for compensation. The Tribunal did not err in concluding that Wexford failed to establish that it was a charitable institution.

The Tax Tribunal also did not err in determining that Wexford was not entitled to an exemption on the basis that the property was used as a hospital or for public health purposes under MCL 211.7r. In *Rose Hill Center, Inc*, *supra* at 33, the Court looked to a dictionary definition of "public health":

> [t]he art and science of protecting and improving community health by means of preventative medicine, health education, communicable disease control, and the application of the social and sanitary sciences. [*Id.*, quoting *The American Heritage Dictionary: Second College Edition*.]

In *ProMed Healthcare*, *supra* at 500, this Court held that the public health exemption under MCL 211.7r is not available for "a fairly typical medical practice, where patients are expected to pay for medical care received, either through private or governmental insurance programs." The Court reasoned:

> If we were to accept ProMed's argument and reverse the Tax Tribunal's ruling in the present case, we would in effect be granting tax-exempt status to every doctor's office in the state, as well as every organization offering health-related services, as long as those organizations are structured as nonprofit corporations and maintain policies of offering some "appropriate" level of charity medical care to indigent persons. We cannot conclude that the Legislature intended MCL 211.7o and 211.7r to create such a result. [*ProMed Healthcare*, *supra* at 500-501.]

The Tax Tribunal found that Wexford's operations were similar to the previous Medical Arts Group and those provided by Dr. Betts-Barbus at her own private medical practice, and that Wexford's operations parallel a typical private medical clinic, rather than an organization that provides public health services. The Tax Tribunal further found that the services that Wexford claims as serving public health purposes were "inherent to the medical profession." These findings are supported by competent, material, and substantial evidence on the whole record. Because the evidence disclosed that the property was used to operate a fairly typical medical office, the Tax tribunal did not err in concluding that the exemption under MCL 211.7r was not available. *ProMed Healthcare*, *supra* at 500-501.

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The Tax Tribunal did not err in finding that MRMC and MMM were not entitled to the charitable exemption under MCL 211.7o. Under *ProMed Healthcare, supra* at 499, petitioners were required to show that "the organization's activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons." Neither MMM nor MRMC made that showing. Rather, the evidence disclosed that the total revenue for the subject property was $533,082.08 in 1998 and $579,792.12 in 1999. During the same time, the family medical practice operated by MMM granted only $271.40 of services to charity patients, and generally only when its collection efforts failed. Further, there was no evidence that the laboratory draw station, the weight

management clinic or the physical therapy program operated by MRMC granted any charity. And, to the extent MMM and MRMC argue that the clinic's open-door policy and its acceptance of Medicaid patients without limitation renders it a charitable institution, it is no different from Wexford. Thus, the Tax Tribunal did not err in finding that neither MRMC nor MMM were entitled to an exemption as a charitable institution.

The Tax Tribunal also did not err in concluding that MRMC and MMM were not entitled to the hospital or public health exemption under MCL 211.7r. Regarding MMM, the Tax Tribunal concluded that MCL 211.7r did not apply because MMM did not own the property during the tax years in question. We need not review this issue because we conclude that like Wexford, MMM did not establish that it operated other than as a typical private medical clinic, rather than an organization that provides public health services. *ProMed Healthcare*, *supra*. The focus of the services provided was the individual patient, rather than the public at large. While some public health services were indeed provided, these were limited and would not support a finding that the property was used for public health purposes.

The Tax Tribunal also properly concluded that MRMC was not entitled to the hospital or public health exemption under MCR 211.7r. First, MRMC did not operate a hospital at the subject property as defined by MCL 333.20106. An MRMC representative acknowledged that the subject property was not a hospital, and that the laboratory draw station, and the weight management and physical therapy programs operated by MRMC on the premises were "extensions of hospital outpatient departments." Accordingly, the Tax Tribunal did not err in finding that "MRMC is not using the subject property for purposes unique to the operation of an inpatient hospital but for purposes that are commonly performed in non-hospital settings."

Further, MRMC did not establish that it was entitled to the public health exemption under MCR 211.7r. The record adequately supports the Tax Tribunal's finding that "[t]he central focus of MRMC's activities . . . is medical care and treatment of individual patients and not the community at large." The Tax Tribunal's conclusion that the Legislature did not intend that "every nonprofit organization offering health-related services would qualify for a public health exemption" is consistent with this Court's decision in *ProMed Healthcare*, *supra*. The Tax Tribunal did not err in finding that MRMC was not entitled to the public health exemption under MCR 211.7r.

Affirmed.

/s/ Michael R. Smolenski
/s/ Helene N. White
/s/ Kirsten Frank Kelly