

**STATE OF MICHIGAN
IN THE SUPREME COURT**

BARUCH SLS, INC.,

Petitioner-Appellant,

vs.

TOWNSHIP OF TITTABAWASSEE,

Respondent-Appellee.

Supreme Court Docket No. 152047

Court of Appeals Docket No. 319953

Michigan Tax Tribunal

Docket No. 0395010 & 0415093

RHOADES MCKEE, P.C.
By: GREGORY G. TIMMER (P39396)
TERRY L. ZABEL (P53798)
Attorneys for Petitioner-Appellant
55 Campau Ave., NW
Suite 300
Grand Rapids, MI 49503
(616) 235-3500

HUMPHREYS, CAMPBELL, DUST
& HUMPHREYS, P.C.
By: GARY R. CAMPBELL (P36596)
Attorneys for Respondent-Appellee
5090 State Street
Building A, Suite One
Saginaw, MI 48603
(989) 792-2552

**RESPONSE TO APPLICATION FOR LEAVE TO APPEAL BY
PETITIONER-APPELLANT**

PROOF OF SERVICE



TABLE OF CONTENTS

INDEX OF AUTHORITIES	iii-iv
COUNTER-STATEMENT OF JUDGMENT APPEALED FROM AND RELIEF SOUGHT.....	v, vi, vii
COUNTER-STATEMENT OF QUESTIONS INVOLVED	viii
COUNTER-STATEMENT OF THE MATERIAL PROCEEDINGS AND FACTS	1
I. INTRODUCTION	1
II. STATEMENT OF FACTS.....	2
A. BARUCH AND STONE CREST	2
B. ADMISSION AND FEES.....	4
C. CHARITY CARE POLICY.....	5
III. MATERIAL PROCEEDINGS	8
ARGUMENT.....	11
A. COUNTER-STATEMENT OF THE STANDARD OF REVIEW	11
B. THE MICHIGAN COURT OF APPEALS WAS CORRECT IN AFFIRMING THAT THE TAX TRIBUNAL'S HOLDING THAT PETITIONER'S "CHARITY" IS BEING OFFERED ON A DISCRIMINATORY BASIS BECAUSE IT CONTRACTUALLY CONTROLS THE ADMISSIONS REQUIREMENTS TO BE A RESIDENT OF THE FACILITY IN ORDER TO APPLY FOR SUCH "CHARITY"	12
I. INTRODUCTION.....	12
II. BARUCH OFFERS ITS "CHARITY" ON A DISCRIMINATORY BASIS.....	14
RELIEF SOUGHT.....	24
APPENDIX.....	25

INDEX OF AUTHORITIES

CASES

<i>ANR Pipeline Co. v. Dept. of Treasury</i> , 266 Mich App 190, 198; 699 NW2d 707 (2005), App den 474 Mich 936; 706 NW2d 13 (2005).....	23
<i>Circle Pines Center v. Orangeville Township</i> , 103 Mich App 593, 597; 302 NW2d 917 (1981), app den 417 Mich 929 (1983)	12
<i>Comstock Village Ltd. Dividend Housing Ass'n v. Comstock Township</i> , 168 Mich App 755, 759; 425 NW2d 702 (1988).....	11
<i>Holland Home v City of Grand Rapids</i> , 219 Mich App 384, 400; 557 NW2d 118 (1986).....	19
<i>Kalamazoo Aviation History Museum v. City of Kalamazoo</i> , Mich App 709, 714-715; 346 NW2d 862 (1984).....	20
<i>Liberty Hill Housing Corp. v City of Livonia</i> , 480 Mich 44; 746 NW2d 282 (2008)	12
<i>Michigan Baptist Homes & Development Co. v. City of Ann Arbor</i> , 396 Mich 660; 242 NW2d 749 (1976)	19, 21, 22
<i>Pheasant Ring v. Waterford Township</i> , 272 Mich App 436, 438; 726 NW2d 741 (2006).....	12
<i>ProMed Healthcare v. City of Kalamazoo</i> , 249 Mich App 490, 492; 644 NW2d 47 (2002).....	23
<i>Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc. v. Sylvan Township</i> , 416 Mich 340, 348-349; 330 NW2d 682 (1982)	18, 19

Wexford Medical Group v City of Cadillac,

474 Mich 192; 713 NW2d734 (2006)1, 8, 9, 11, 12, 13, 14, 16, 18, 23

STATUTES

MCL 211.7d 8

MCL 211.7ov, 1, 8, 9

MCL 211.7o(1)18

MCL 211.7r 8, 9

MCL 211.9v, 1, 9

MCR 211.7o(1).....12

COUNTER-STATEMENT OF JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Petitioner-Appellant Baruch SLS, Inc. has filed an Application for Leave to Appeal the April 21, 2015 unpublished Opinion of the Michigan Court of Appeals denying Petitioner an exemption from real and personal property taxes under MCL 211.7o and MCL 211.9 for the 2010, 2011, and 2012 tax years for the specific property in Tittabawassee Township.

The Court of Appeals was correct in ruling that Baruch was not a "charitable institution" entitled to the statutory exemption from real and personal property taxes. As the Court of Appeals stated, Baruch's "charity care policy" was strictly its "income-based program" whereby a resident's monthly charge may be reduced based on the amount of their income. The court further stated:

"Applicants for the program are required to show that they would have the ability to pay some amount toward their living arrangement and care (even if it is solely from Medicaid or Medicare), and Stone Crest has not admitted any resident who has not had some ability to pay. Stone Crest does not provide free housing or care.

(Petitioner's Exhibit A, p1)

The Court of Appeals further stated in its Opinion:

[P]etitioner's charity care policy is *not* broadly defined as offering a reduced rate to all applicants unable to pay the standard market costs for this type of facility. Instead, petitioner's *only* stated charity care policy is the income based program, itself. But to be eligible for the program, one must first be a resident. And to be a resident, one must have the ability to pay at the outset. If not, petitioner will not accept the applicant."

(Petitioner's Exhibit A, p5)

Petitioner's income based program has been, and is, a contractual relationship entered between Baruch and the residents of its facility. The Resident Handbook of Stone Crest Assisted Living provides that five factors must be met by a resident to become eligible for the income based program at the facility. The Handbook states in pertinent part:

"The Income Based Program will reduce the monthly rent of a resident to the amount of his or her income, allowing a resident to remain at Stone Crest Assisted Living as long as he or she wishes. Stone Crest Assisted Living is licensed as an Adult Foster Care Facility with the State of Michigan; and Medicare, and Medicaid do not cover room and board.

The following factors must be met by a resident to become eligible for the Income Based Program at Stone Crest Assisted Living:

1. A resident will have lived at Stone Crest Assisted Living and made a minimum of twenty-four (24) full monthly rent payments.
2. A resident will be required to apply for and be determined eligible for Medicaid. Michigan Department of Human Services (DHS) currently provides this benefit.
3. A resident will provide copies and information about all available income.
4. A resident will qualify for the Income Based Program beginning the calendar month after the date of notification of eligibility for Medicaid to Stone Crest Assisted Living.
5. A maximum of twenty-five percent (25%) of the available rooms at Stone Crest Assisted Living may be

used for the Income Based Program at a given time.”

(Respondent’s Exhibit G)

In addition, the Income Based Program sheet for 2010, 2011, and 2012 repeats these same requirements and requires that the designated representative of the resident as well as the facility representative sign this agreement. (Respondent’s Exhibit H).

The Court of Appeals recognized that these requirements were agreed upon by the parties and were enforceable.

Respondent-Appellee Township of Tittabawassee requests that this Honorable Court deny the application for leave to appeal filed by Petitioner-Appellant Baruch SLS, Inc.

COUNTER-STATEMENT OF QUESTIONS INVOLVED

WHETHER THE MICHIGAN COURT OF APPEALS WAS CORRECT IN HOLDING THAT PETITIONER'S "CHARITY CARE" WAS BEING OFFERED ON A DISCRIMINATORY BASIS BECAUSE PETITIONER'S INCOME BASED PROGRAM CONTAINED FIVE REQUIREMENTS THAT CONTROLLED WHO CAN BE A RESIDENT AND THAT THE APPLICANT MUST HAVE THE ABILITY TO PAY AT THE OUTSET IN ORDER TO BE A RESIDENT?

The Tax Tribunal answered the question "Yes".

The Michigan Court of Appeals answered the question "Yes".

The Petitioner-Appellant answered the question "No".

Respondent-Appellee answered the question "Yes".

COUNTER-STATEMENT OF THE MATERIAL PROCEEDINGS AND FACTS

I. INTRODUCTION

Petitioner-Appellant, Baruch SLS, Inc. ("Baruch") claims that its adult foster care home known as Stone Crest Senior Living Adult Foster Care ("Stone Crest") should be tax exempt under MCL 211.7o and MCL 211.9 for the 2010, 2011, and 2012 tax years. The Michigan Tax Tribunal held that Baruch was not entitled to a charitable exemption for three tax years.

The Michigan Court of Appeals affirmed the decision of the Michigan Tax Tribunal in holding that Petitioner's own narrow definition of charity based activity could not clear the discriminatory basis hurdle established in Wexford Medical Group v City of Cadillac, 474 Mich 192; 713 NW2d734 (2006). Petitioner's Charity Care Policy was limited to its income based program which was not broadly defined as offering a reduced rate to all applicants unable to pay the standard market costs for this type of facility. To be eligible for the program, one was first required to be a resident of the facility pursuant to the five requirements of the contractual income based program.

The Court of Appeals was correct in affirming the decision of the Tax Tribunal.

The Court's ruling was based upon Petitioner's Income Based Program which is specific to it. The record does not indicate any other entities that use such a program. Baruch's Resident Handbook and Income Based Program for tax years 2010, 2011, and 2012, direct such program to the facility in question. It is therefore unlikely to be of interest or importance in other disputes.

Further, there are no current conflicts among the Court of Appeals' opinions or between the Court of Appeals and the Michigan Supreme Court on this issue.

II. STATEMENT OF FACTS

A. BARUCH AND STONE CREST

Baruch is a non-profit corporation that operates under various assumed names within the State of Michigan. It holds itself out to the public as a faith-based company, but is not affiliated with any particular church or denomination (TR 104).

On December 30, 2009, Baruch entered into an agreement with Ironwood Estates Development Company to purchase the business assets and real estate of Stone Crest Senior Living Adult Foster Care in Tittabawassee Township. (Stipulation of Facts, para 11-13)

Baruch also entered into a Letter of Agreement with Stone Crest Management, LLC, a for-profit corporation, to use Stone Crest Management's licenses with the State of Michigan Department of Human Services in order to operate the facility. (Stipulation of Facts, para 14; TR 91-92, 96)

Baruch then purchased Stone Crest Company in 2013.

At the time of the purchase of the facility, Baruch Senior Ministries, an assumed name of Baruch, entered into a services agreement with Leisure Living Management, Inc. Leisure Living is a for-profit corporation that provides accounting and other cost control systems and supplies for Stone Crest. (Respondent Exhibit 4, TR 34, 51-52, Respondent

Exhibit R-4 para 2.2)

Thomas Noble, a certified public accountant, is the founder of Baruch and is its registered agent as well as an *ex officio* member of its Board of Directors. He is also the president, CEO, and registered agent of Leisure Living. (TR 51-52)

The services agreement between Baruch Senior Ministries and Leisure Living provided for vendor services that allowed Leisure Living to enter into contracts for furnishing Stone Crest with electricity, gas, water, steam, telephone, cleaning services, vermin extermination services, boiler maintenance, air conditioning maintenance, air conditioning maintenance, master television antennas, and other necessary utilities or services as well as the purchase of all material and supplies to the extent provided in the approved budget. (Respondent's Exhibit R-4, para 2.3)

The services agreement further provided that Leisure Living was to institute any necessary legal actions or proceedings to collect obligations owing to Stone Crest or to cancel or terminate any contract with Stone Crest for breach or default. (Respondent's Exhibit R-4, para 2.4)

Baruch was required to pay to Leisure Living three and one-quarter percent (3 ¼%) of its gross revenues per month for the services that Leisure Living provides. This monthly fee does not include other accounting services. (Respondent's Exhibit R-4, para 6; TR 60)

Although Baruch is deemed to be a non-profit corporation, it used a for-profit corporation to manage the facility under the services agreement.

The rooms at Stone Crest are smaller "studio rooms" and not the one-bedroom suites that are common to the usual assisted living facility. (TR 135-136)

Wing A has the capacity to enable 20 residents to occupy the wing in 16 private bedrooms with half-bathes and two semi-private bedrooms without half-baths. Wing B also enables 20 residents to occupy the wing in 14 private bedrooms with half-baths and three semi-private bedrooms without half-baths. (TR 91, 133-136)

Stone Crest provided reduced accommodations in comparison with other assisted living facilities in the area.

B. ADMISSION AND FEES

Stone Crest requires an entrance fee of \$500.00 payable in advance in order to reserve a room or to be put on the waiting list. (Respondent's Exhibit R-10). The entrance fee was later increased to \$750.00. (TR 139). Stone Crest's general fee policy states that the entrance fee is "non-refundable". (Respondent's Exhibit R-9)

While Stone Crest has claimed that the entrance fee is refundable until the person sleeps one night in the building, there are no written policies that state such exception. Baruch admitted that the person signing the general fee policy would be bound by the policy terms. (TR 67, 148-150)

Stone Crest's general fee policy states that the obligations under the policy shall be that of the resident and responsible party, jointly and severally, and shall bind the resident and responsible party and their respective heirs, personal representatives, successors, and assigns. (Respondent's Exhibit R-9)

In addition to the general fee policy, Stone Crest's policies are restated in its resident handbook. The resident and/or designated representative is required to sign the handbook, which binds the resident and designated representative to the financial obligations set forth in Baruch's policies. (Respondent's Exhibit H)

Although Baruch cited certain exceptions to its written policies, Baruch admitted that it does not have any written policies that provide for such exceptions. (TR 69, 137-140, 148-149). Baruch further admitted at the hearing that the residents and the resident's representatives were legally bound to the written policies and procedures. (TR 66-67, 141). Further, Baruch has contracted with Leisure Living to institute any necessary legal actions or proceedings to collect obligations owing to Stone Crest. (Respondent's Exhibit R-4, para 2.4).

C. CHARITY CARE POLICY

The Court of Appeals was correct in holding that Petitioner's Charity Care Policy was solely its income based program. (Petitioner's Exhibit A, p 5)

Baruch fully admitted that its income based program was its only charity care policy. (Respondent's Exhibit R-13; Petitioner's Response to Interrogatory 20)

Stone Crest states in its resident handbook as well as in its separate income based policy the following:

"The following factors must be met by a resident to become eligible for the income based program:

- "1. A resident will have lived at Stone Crest Assisted Living and made a minimum of twenty-four (24) full monthly rent payments.

2. A resident will be required to apply for and be determined eligible for Medicaid. Michigan Department of Human Services (DHS) currently provides this benefit.
3. A resident will provide copies and information about all available income.
4. A resident will qualify for the income based program beginning the calendar month after the date of notification of eligibility for Medicaid to Stone Crest Assisted Living.
5. A maximum of 25% of the available rooms at Stone Crest Assisted Living may be used for the income based program at a given time."

(Respondent's Exhibit G)

The income based program emphatically states that all five factors "must" be met by a resident in order to become eligible for the program. The program has remained the same during the relevant 2010, 2011, and 2012 tax years.

Although Baruch stated during the hearing that it makes exceptions to the program, it admitted that there are no documents that would provide for any exceptions to the program. (TR 68-69, 140-141). Also, Baruch contractually obligates the resident and designated representative to agree with the mandatory requirements of the income based program. The resident and/or the resident's representative is required to sign both the personnel handbook as well as the income based program sheet. This contractually binds the resident and resident's representative to these requirements.

(Respondent's Exhibits G and H)

Under the written policy, a resident is not eligible for reduced monthly rent unless the resident meets these five factors. The resident must have lived at Stone Crest and

made a minimum of twenty-four full monthly rent payments, must have applied for and been determined eligible for Medicaid, must provide copies and information regarding all of the resident's available income, and a maximum of 25% of the available rooms at Stone Crest may be used for the income based program at a given time.

The Court of Appeals recognized that written policies provided that one must first be a resident of the facility in order to be eligible for the program. However, to be a resident, the person must have the ability to pay at the outset a minimum of twenty-four full monthly rent payments. If the applicant is unable to make such payments, the applicant does not become a resident of the facility. (Court of Appeals' Opinion at p 5)

The Court of Appeals stated, and Baruch has confirmed, that its income based program is the only "charity care" policy that is available at Stone Crest. In order to be admitted to Stone Crest, a person is required to have the ability to pay. Stone Crest has not admitted anyone to its facility who has not had the ability to pay. Every resident at the facility is charged a fee. There is no one at the facility who is not charged for anything for their stay. (TR 73-75)

Although Baruch has not terminated a resident's occupancy as of this date, it has contractually retained the right to terminate a resident's occupancy at any time upon giving 30 days advance written notice of termination. (TR 72, 99)

The Court of Appeals was correct in stating that, "While it is true that the petitioner does not discriminate against its residents who are eligible for the income based program, entry into this charity is conditioned upon the Stone Crest residency requirements, which

in turn, are conditioned on the ability to pay.” (Petitioner’s Exhibit A, p 5)

The Court noted that this type of “pay-to-play policy” means that the petitioner does not serve any person who needs the particular type of charity being offered. The petitioner does not meet the requirements of Wexford under its “charitable institution” guidelines.

III. MATERIAL PROCEEDINGS.

Baruch initially applied for tax exemption to the Tittabawassee Township Board of Review on or about February 11, 2010. The application for tax exemption was made pursuant to MCL 211.7d only. The request was denied by the Board of Review because the facility was not qualified, built, or financed under Section 202 or 236 of the National Housing Act of 1959.

Baruch then filed its petition appealing the Board of Review decision to The Michigan Tax Tribunal under MTT Docket No. 0395010. Rather than appealing the denial of exemption under MCL 211.7d, Baruch claimed, for the first time, an exemption pursuant to MCL 211.7o.

On or about March 11, 2011, Baruch again petitioned the Tittabawassee Township Board of Review for a tax exemption pursuant to MCL 211.7o and/or MCL 211.7r. The Board of Review denied the request for tax exemption.

Baruch then filed its second petition with the Michigan Tax Tribunal for the 2011 tax year under MTT Docket No. 0415093. Baruch based this appeal solely on MCL 211.7o. It did not appeal the denial under MCL 211.7r.

On or about May 24, 2012, Baruch filed a motion to amend and consolidate the two previously filed petitions in the Tax Tribunal for the tax years 2010 and 2011 as well as to amend the 2011 petition to add the 2012 tax year. For the first time, Baruch attempted to claim a personal property tax exemption pursuant to MCL 211.9 as well as a further tax exemption pursuant to MCL 211.7r. These exemptions were never appealed to the Tax Tribunal in either the 2010 petition or in the 2011 petition. The Tax Tribunal granted Baruch's motion to amend and consolidate.

On January 29, 2013, the Tax Tribunal held a hearing on the consolidated petitions. On December 20, 2013, the Tax Tribunal entered its written final Opinion and Judgment holding that Baruch was not entitled to a charitable exemption under MCL 211.7o for the 2010, 2011, and 2012 tax years.

The Tribunal found that the Petitioner did not meet Wexford's requirement that this charity not be offered on a discriminatory basis. Petitioner chose who, among the group that it reports to serve, deserve its services. (Petitioner's Exhibit B, p 11).

Baruch then appealed the Tax Tribunal's decision to the Michigan Court of Appeals. The court issued an unpublished original opinion on April 21, 2015. The court affirmed the decision of the Tax Tribunal in holding that Petitioner's income based program was a "pay-to-play policy" that controlled who could be a resident of the facility and who, in turn, could apply for the income based program. The policy controlled who could be a resident. If a person could not become a resident, the person would not be able to apply for the income based program.

Baruch then filed a motion for reconsideration. Thereafter, it filed another motion for leave to file a reply to respondent's answer to the motion for reconsideration as well as motion for immediate consideration. The court granted petitioner's motion for immediate consideration as well as its motion for leave to file a reply. It then denied Baruch's motion for reconsideration on June 12, 2015.

Baruch has now filed the present application for leave to appeal to this Honorable Court.

ARGUMENT

WHETHER THE MICHIGAN COURT OF APPEALS WAS CORRECT IN HOLDING THAT PETITIONER'S "CHARITY CARE" WAS BEING OFFERED ON A DISCRIMINATORY BASIS BECAUSE PETITIONER'S INCOME BASED PROGRAM CONTAINED FIVE REQUIREMENTS THAT CONTROLLED WHO CAN BE A RESIDENT AND THAT THE APPLICANT MUST HAVE THE ABILITY TO PAY AT THE OUTSET IN ORDER TO BE A RESIDENT?

A. COUNTER-STATEMENT OF THE STANDARD OF REVIEW

Appellate review of a decision by the Michigan Tax Tribunal is multifaceted. In the absence of a fraud claim, the decision is reviewed for misapplication of the law or the adoption of a wrong principle. The court stated:

"The standard of review for Tax Tribunal cases is multifaceted. Where fraud is not claimed, this Court reviews the tribunal's decision for misapplication of the law or adoption of a wrong principle. Michigan Bell Tel Co v. Dep't of Treasury, 445 Mich 470, 476; 518 NW2d 808 (1994). We deem the tribunal's factual findings conclusive if they are supported by "competent, material, and substantial evidence on the whole record." *Id.*, citing Const. 1963, Art 6 § 28 and Continental Cablevision v. Roseville, 430 Mich 727, 735; 425 NW2d 53 (1988). But when statutory interpretation is involved, this Court reviews the tribunal's decision *de novo*. Danse Corp v. Madison Hts, 466 Mich 175; 644 NW2d 721 (2002)."

Wexford Medical Group v. City of Cadillac, 474 Mich 192, 201-202; 713 NW2d 734 (2006).

Substantial evidence is defined as more than a scintilla of evidence, although it may be substantially less than the preponderance of evidence necessary for most civil cases. Comstock Village Ltd. Dividend Housing Ass'n v. Comstock Township, 168 Mich App 755, 759; 425 NW2d 702 (1988).

This court will generally defer to the Tax Tribunal's interpretation of a statute that is charged with administering and enforcing. Pheasant Ring v. Waterford Township, 272 Mich App 436, 438; 726 NW2d 741 (2006), reversed on other grounds, Liberty Hill Housing Corp. v City of Livonia, 480 Mich 44; 746 NW2d 282 (2008).

Exemption statutes are to be strictly construed in favor of the taxing unit because exemption is the antitheses of tax equality. Circle Pines Center v. Orangeville Township, 103 Mich App 593, 597; 302 NW2d 917 (1981), app den 417 Mich 929 (1983).

B. THE MICHIGAN COURT OF APPEALS WAS CORRECT IN AFFIRMING THAT THE TAX TRIBUNAL'S HOLDING THAT PETITIONER'S "CHARITY" IS BEING OFFERED ON A DISCRIMINATORY BASIS BECAUSE IT CONTRACTUALLY CONTROLS THE ADMISSIONS REQUIREMENTS TO BE A RESIDENT OF THE FACILITY IN ORDER TO APPLY FOR SUCH "CHARITY"

I. INTRODUCTION

Baruch sought a tax exemption for its Stone Crest property under MCR 211.7o(1) for the 2010, 2011, and 2012 tax years. MCR 211.7o(1) states:

"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."

The Michigan Supreme Court in Wexford Medical Group v. City of Cadillac, 474 Mich 192, 203; 713 NW2d 734 (2006) set forth a three pronged test to assess whether a claimant was entitled to a tax exemption under the act. The courts formulated the test 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."

In the present case, the Tax Tribunal found that Baruch had met prong one and prong three of the Wexford test. However, the Tribunal found that Baruch did not meet prong two of the text.

In order to meet the requirements of prong two of the test that the claimant is a nonprofit charitable institution, claimant must meet the following six factors:

- "(1) A 'charitable institution' must be a non-profit institution.
- (2) A 'charitable institution' is one that is organized chiefly, if not solely, for charity.
- (3) A 'charitable institution' does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a 'charitable institution' serves any person who needs the particular type of charity being offered.
- (4) A 'charitable institution' brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A 'charitable institution' can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A 'charitable institution' need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a 'charitable institution' regardless of how much money it devotes to charitable activities in a particular year."

Wexford, 474 Mich at 215.

In analyzing the above six factors, the Tax Tribunal found that Baruch did not meet factor three of the Wexford analysis for a charitable institution because Baruch offered its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. The Michigan Court of Appeals affirmed this ruling when it held that Baruch could not clear the discriminatory basis hurdle of Wexford. The court noted that Baruch controlled the admission requirements to its facility and only allowed by contract residents to apply for the income based program, its only "charity-based" activity.

II. BARUCH OFFERS ITS "CHARITY" ON A DISCRIMINATORY BASIS

The Michigan Tax Tribunal as well as the Michigan Court of Appeals found that Baruch did not meet Wexford's third factor in determining whether an institution is a "charitable institution" under MCR 211.7o. The section states:

"A 'charitable institution' does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, 'charitable institution' serves any person who needs the particular type of charity being offered."

Wexford, supra.

The Tribunal found that Baruch offered his charity on a discriminatory basis by choosing who deserves the services among the group that purports to serve. The Tribunal stated:

"In Wexford, at 213, our Supreme Court explained that:

"In a general sense, there can be no restrictions on those who are afforded the benefit of the institution's charitable deeds. This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought. *Rather, a charitable institution can exist to serve a particular group or type of person, but the charitable institution cannot discriminate within that group* [Emphasis added.]

In this case, the Tribunal finds that Petitioner offers its charity on a discriminatory basis. Petitioner purports to serve the general public and aged populations by providing home health services and other senior lifestyle services. Petitioner asserts that its services are available to all "regardless of their ability to pay" and that "a large percentage of the rent payments made in any given year are discounted charitable rents." (TR at 74). Petitioner does not discriminate on the basis of any protected-class (race, color, creed, religion, national or ethnic origin, sex, sexual orientation, gender identity, or physical ability. That, however, does not make its policies any less discriminatory.

Petitioner appears to have placed obstacles in the way of those who need. Petitioner first conditions eligibility to existing residents having made a minimum of twenty-four full monthly rent payments, and being determined eligible for Medicaid. As a result, Petitioner's charity is not freely available to the general public and aged population, but to a smaller subset, its existing residents who have first met certain conditions. We cannot tell from the record whether the general public knows of the program's existence.

Petitioner stated that the admission process does not ask for any financial information. While this may be true, it is also true that Petitioner's stated monthly rate was quoted at \$3,200 per month, and Petitioner does not offer free services and has not admitted any residents for no fee; as a result some measure of discrimination or self-selection occurs *ab initio*. It is understood that Petitioner is not able to provide reduced rent to every resident who applies for it and it is not offered on a first-come, first-serve basis. Petitioner requires that a resident seeking participation in its income based

program be approved for Medicaid. (TR at 113). This is because, according to Petitioner, Medicaid eligible residents have already been determined by a separate agency not to have funds available to pay the full rate. Further, by written policy, Petitioner does extend its income based programs to residents who have not first made full payment for the 24 consecutive months and not admit new residents directly on its income based program, although there have been accommodations made to policy on an ad-hoc basis. (TR at 100). That said, the actual decision making process for making such departures from its stated policy was not explained at the hearing. We recognize that Petitioner has extended participation in this program beyond the policy's state maximum to as much as 40 percent of its resident population who cannot pay the regular room rate. Yet, there is no guarantee of its availability to all who seek it, and particularly, in the case of an individual seeking such "charity" when the 25 percent threshold has been exceeded, too speculative.

The mere process of selecting residents who will receive rent requires some level of discrimination in that a choice must be made from the group Petitioner purports to serve. Wexford clearly holds that charities can exist to serve a particular group or type of person.

However, within these groups, charities cannot discriminate by "choosing who, among the group it purports to serve, deserves the services." *Id* at 215. Charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, but this is true only to the extent that the organization admits persons who need and seek the benefits offered but are unable to pay. See Wexford, supra at 213. Accordingly, we find that Petitioner does not meet factor (3), as the "charity" is being offered on a discriminatory basis."

(Tax Tribunal Opinion, p14-16)

The Tax Tribunal judge heard all of the testimony provided by the parties. The Tribunal's determination that Baruch offered its charity on a discriminatory basis was

supported by the record.

In affirming the Tax Tribunal's administrative decision that Baruch was not a charitable institution because it offered its charity on a discriminatory basis, the Court of Appeals stated:

"[W]hat ails petitioner is the stated scope of its charity care policy. Specifically, petitioner's charity care policy is *not* broadly defined as offering a reduced rate to all applicants unable to pay the standard market costs for this type of facility. Instead, petitioner's *only* stated charity care policy is the income based program, itself. But to be eligible for the program, one must first be a resident. And to be a resident, one must have the ability to pay at the outset. If not, petitioner will not accept the applicant. This means that in order to be eligible for the income based program, one must have been able to pay, at some point, more than what government assistance would offer. Indeed, petitioner has never admitted any resident who did not in the beginning have the ability to pay more than this. So while it is true that petitioner does not discriminate among its residents who are eligible for the income based program, entry into this charity is conditioned upon the Stone Crest residency requirements, which in turn, are conditioned on the ability to pay. This type of pay-to-play policy means petitioner does not "serve any person who needs the particular type of charity being offered." *Id.* at 215.

In this respect, then, this case falls more in line with *Mich Baptist Homes* than *McFarlan*. While not exactly akin to Hillsdale Terrace (which had a more exacting admissions policy), both petitioner and Hillsdale Terrace at the outset emphasized the ability to pay and required financial disclosures. The McFarland Home, on the other hand, had no preconditioned financial disclosure and subsidized care for *all* residents. While it may be true that petitioner in this case subsidizes many, if not all, residents whether in the income based program or not, the record reflects that the income based program is petitioner's *only* charity-based activity. In other words, petitioner's only charity-based activity was the

subsidizing of those in the income based program, who, at some point, had already paid for their eligibility to be there. "[T]he Legislature did not intend that housing for the elderly should be tax exempt [for] only those persons who can afford the cost of the housing benefit." *Retirement Homes*, 396 Mich at 671-672. Given petitioner's own narrow definition of charity-based activity, then, petitioner cannot clear the discriminatory basis hurdle of *Wexford*."

(Court of Appeals Opinion, pp5-6, footnotes omitted)

The record is clear that Baruch offers its "charity" pursuant to contracts that applicants and their designated representatives are required to sign. Applicants and their representatives are required to sign the Stone Crest resident handbook as well as the income based program sheets. This commits the applicant and designated representatives to comply with the requirements of the income based program. While Baruch claims that it provides "exemptions" to these contracts, there are absolutely no documents or other information that support such right to an exemption.

The Tribunal judge recognized that these alleged exemptions are made on an ad-hoc basis, but the actual decision making process for making such departures from its stated contractual policies were not explained at the hearing. In fact, the mere fact that Baruch claims that it can make such exemptions on an ad-hoc basis merely shows that Baruch is again choosing who, among the group it purports to serve, might receive an exemption. This is discriminatory, and exempts Baruch as a charitable institution under MCL 211.7o(1).

The contractual obligations placed upon applicants and their designated representatives are validly binding contracts. Under Michigan law, a contract is not a gift

for charitable purposes. *Holland Home v City of Grand Rapids*, 219 Mich App 384, 400; 557 NW2d 118 (1986).

In Holland Home, the court stated:

"In this case, petitioner's continuing care plan is contained within the agreement between petitioner and its residents of RME I and RME II. The agreement is a contract because petitioner offers the resident a home and care under certain terms and conditions, the resident accepts the offer as extended, the resident pays the entrance fees and promises to pay the monthly fees, and petitioner promises to extend care even when the resident can no longer pay.

In addition, the continuing care plan is a legally enforceable, binding promise, imposing a duty on petitioner to provide its residents with care after the exhaustion of the residents' financial resources as long as the residents have applied for the available public assistance. [citation omitted] We therefore conclude that petitioner's continuing care plan cannot be a gift because a gift requires no pecuniary consideration."

Holland Home, 219 Mich App at 400-401.

In addition to requiring that its residents enter binding contracts regarding their care, Baruch has not offered its "charity" without restriction and to an indefinite number of persons. Holland Home, 219 Mich App at 391-393.

In Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc. v. Sylvan Township, 416 Mich 340, 348-349; 330 NW2d 682 (1982), the Michigan Supreme Court stated:

"In *Michigan Baptist Homes*, this Court declared that, to qualify for a charitable or benevolent tax exemption, property must be used in such a way that it 'benefit the general public without restriction'. Courts in other jurisdictions have

expressed this concept in the following language: '[Charity] *** [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.' (Emphasis supplied)"

[Footnotes omitted]; See also, Kalamazoo Aviation History Museum v. City of Kalamazoo, Mich App 709, 714-715; 346 NW2d 862 (1984).

In the present case, the undisputed evidence showed that each applicant must enter into a resident care agreement with Baruch before being admitted as a resident to Stone Crest. This requires a \$750.00 non-refundable entrance fee. Monthly charges are due and owing in full each month and payable in advance. (TR 139, 148-150)

Stone Crest's income based program, which is its only charity care policy, requires that a person have lived at Stone Crest and made a minimum of twenty-four full monthly rent payments before being eligible for reduced monthly rents to the amount of their income. (Respondent's Exhibit R-13: Interrogatory 20; Respondent's Exhibits G and H)

Baruch has admitted, and it is undisputed, that Stone Crest has not admitted anyone to its facility who has not had the ability to pay. Stone Crest has never accepted any person who is not able to pay. Every resident at the facility is charged a fee, and no one at the facility is not charged. (TR 73-75)

It is undisputed that Stone Crest does not accept anyone as a resident unless they are able to pay. Stone Crest does not provide free services to its residents. These policies are set forth in writing and signed by the resident and/or the resident's representative.

Further, Stone Crest requires the eligible resident to qualify for Medicaid and that the "charity" is limited to a maximum of 25% of the available rooms at Stone Crest. (Respondent's Exhibits G and H)

Baruch clearly does not promote its "charity". In fact, Baruch admitted that it does not even raise the issue of its purported charity unless the issue is raised by the resident or the resident's family:

"When we're talking to folks who are looking for possible admission to Stone Crest we do not talk to them about their finances. We present to them the documents that are here, we talk to them about these are our room rates, this is either critical care or specialized care, these are the rates for those rooms. There are times when a family will go, oh, no, Mom only has this much money in the bank, what happens when...? Then we would go into explaining and we do as part of our introduction, explain we are a nonprofit, we are here to take care of folks as their health declines and if they outlive their assets and have the ability to do that because we are a nonprofit. If the family approaches us and has more questions we will get into the details of how to make that happen."

(TR 149)

The Court of Appeals pointed out that the present case falls in line with Michigan Baptist Homes & Development Co. v. City of Ann Arbor, 396 Mich 660; 242 NW2d 749 (1976).

In the Michigan Baptist Homes case, testimony was offered to the effect that charges were reduced to some of the residents because of special circumstances given to the financial status of the residents. Also, there were several instances where lifelease fees were waived. However, the court found that Hillside Terrace was not exempt from

property taxation. As the court noted:

"[A]bility to pay all fees is a factor determining whether an applicant will be admitted to Hillside Terrace. Although it is plaintiff's policy not to evict anyone because of that person's financial reverses, plaintiff's rules state that there is a corresponding responsibility on all residents to care properly for financial resources. To determine whether these resources are sufficient to begin with, each applicant is asked to make a rather complete disclosure of assets and income."

Michigan Baptist Homes, 396 Mich 668.

Further, in addition to the financial restriction upon admission, there are strict health requirements. Applicants must demonstrate an ability to maintain themselves in apartments and take meals in the dining facility without the aid of nursing personnel.

The court noted:

"On this record, it appears that the management of Hillside Terrace does not serve the elderly generally, but rather provides an attractive retirement environment for those among the elderly who have the health to enjoy it and who can afford to pay for it. Plaintiff's health and financial limitations on admissions cannot be said to benefit the elderly as a general proposition."

Michigan Baptist Homes, 396 Mich 669, 671.

In the present case, petitioner has a written mandatory income based program that sets forth specific requirements for admission to the facility as a resident. While petitioner has made a few exceptions such as Michigan Baptist Homes, petitioner admitted that none of these exceptions are in writing, nor are they required to be followed. It is left to the sole discretion of petitioner whether or not it will make such exceptions on a voluntary basis. There are no requirements to do so. Baruch may pick

and choose who it wants to exempt or not exempt. This is a completely arbitrary and discretionary process in choosing who may or may not qualify for an undocumented exemption.

Baruch did not meet its burden of proof by a preponderance of the evidence that it did not offer its charity under a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. ProMed Healthcare v. City of Kalamazoo, 249 Mich App 490, 492; 644 NW2d 47 (2002); ANR Pipeline Co. v. Dept. of Treasury, 266 Mich App 190, 198; 699 NW2d 707 (2005), App den 474 Mich 936; 706 NW2d 13 (2005).

The Court of Appeals holding found that the Michigan Tax Tribunal's findings were supported by competent, material, and substantial evidence on the record.

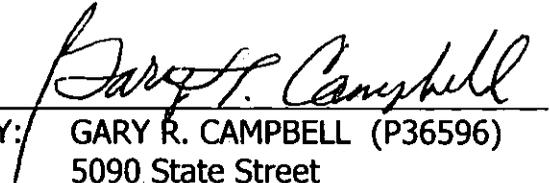
The Tribunal did not misapply the law or adopt a wrong principle in finding the property taxable. Wexford, 474 Mich App. 201. The Court of Appeals was correct in affirming the Tax Tribunal's decision that Baruch SLS, Inc., was not a charitable institution because it offered its "charity" on a discriminatory basis.

RELIEF SOUGHT

Respondent-Appellee Township of Tittabawassee requests this Honorable Court to deny the application for leave to appeal filed by Petitioner-Appellant Baruch SLS, Inc.

HUMPHREYS, CAMPBELL, DUST
& HUMPHREYS, P.C.
Attorneys for Respondent-Appellee

Dated: August 12, 2015.


BY: GARY R. CAMPBELL (P36596)
5090 State Street
Building A, Suite One
Saginaw, MI 48603
(989) 792-2552

APPENDIX

- Exhibit G Income Based Program Excerpts From Stone Crest Assisted Living Resident Handbook, P-13.
- Exhibit H Stone Crest Assisted Living Income Based Programs for 2010, 2011, and 2012, R-11

If you have any questions about Hospice care, please see your Administrator and he or she will take whatever time is necessary so that you can understand the process and know that all of your questions are answered.

11. HOUSEKEEPING

Stone Crest Assisted Living provides full housekeeping services. All rooms are thoroughly cleaned at least once per week by our staff. Bed-making and laundry are done by the resident caregivers. Towels, washcloths, and bed linens for twin beds are provided. Carpets are cleaned on an as-needed basis. If you have a special request to have a carpet cleaned, please let us know. Seasonal-cleaning is done as needed. Your opinions are important to us. If you feel that we can improve our housekeeping or maintenance services in any way, please let the Administrator know.

12. INCOME BASED PROGRAM

The mission of Baruch Senior Ministries is to honor God by providing quality senior lifestyle services that promote the value and dignity of every person. As a Baruch Facility we are designed to provide various levels of assistance with daily activities for seniors and disabled individuals in their community close to friends and family.

As a Christian principled non-profit organization, Baruch Senior Ministries is committed to providing care programs that are designed specifically for the needs of the residents from minimal assistance to more comprehensive care. Baruch Senior Ministries is unique in recognizing the importance and desire of a resident never wanting to move again. To meet this need, Baruch Senior Ministries has established an Income Based Program to provide peace of mind for a resident and his or her family concerned about a resident outliving his or her assets.

The Income Based Program will reduce the monthly rent of a resident to the amount of his or her income, allowing a resident to remain at Stone Crest Assisted Living as long as he or she wishes. Stone Crest Assisted Living is licensed as an Adult Foster Care Facility with the State of Michigan; therefore Medicare, and Medicaid do not cover room and board.

The following factors must be met by a resident to become eligible for the Income Based Program at Stone Crest Assisted Living:

1. A resident will have lived at Stone Crest Assisted Living and made a minimum of twenty-four (24) full monthly rent payments.
2. A resident will be required to apply for and be determined eligible for Medicaid. Michigan Department of Human Services (DHS) currently provides this benefit.
3. A resident will provide copies and information about all available income.
4. A resident will qualify for the Income Based Program beginning the calendar month after the date of notification of eligibility for Medicaid to Stone Crest Assisted Living.
5. A maximum of twenty-five percent (25%) of the available rooms at Stone Crest Assisted Living may be used for the Income Based Program at a given time.

Medicaid eligibility does provide a personal care supplement payment to Stone Crest Assisted Living, currently set at \$192.38 per month. It also allows a resident a small monthly allowance for personal items, approximately forty-four dollars (\$44.00) to sixty-four dollars (\$64.00).

The State of Michigan pays to the Facility an Adult Services Authorized Payment (ASAP) for personal care. The State will not pay this amount if the resident's Medicaid is not kept current. Families that do not keep current the resident's Medicaid will be liable for the amount that the State pays, currently \$192.38 per month. Family agrees to pay such amount to the Facility should the resident's Medicaid lapse.

We encourage residents and their families to discuss future needs and eligibility for the Income Based Program with the Administrator and to also contact the DHS to learn more about the Medicaid application and eligibility process.

We look forward to serving each resident and his or her family for as long as he or she desires to be part of the Baruch Senior Ministries family.

13. LAB TESTING

In accordance with Michigan Law, lab testing may be performed on residents without written consent if a staff member of Stone Crest Assisted Living is exposed to the blood or other bodily fluids of a resident. If the results of such lab testing indicate that the resident is infectious, the resident and/or authorized representative will be informed of these results. Further withholding of these results will be maintained unless required or authorized by law. Laboratory charges incurred for testing related to the staff member of Stone Crest Assisted Living exposure will be the responsibility of Stone Crest Assisted Living.

14. LAUNDRY

We ask that all clothing be labeled with the resident's first initial and last name. You may use either individualized labels or a laundry marker.

Dark colored socks are more difficult to label. There are fabric paints available at local craft stores. You may try using the fabric paints and labeling the socks on the bottom of the foot so that it does not show.

We ask that you also label special belongings such as afghans, quilts, etc.

Laundry at Stone Crest Assisted Living is done weekly or as needed and care is taken to prevent the loss or mix-up of clothing. If there is a problem, please let the staff know immediately so we can remedy the situation.

We are currently unable to provide dry-cleaning service; however, you may pick up and deliver any dry cleaning that needs to be done or feel free to set up a service that picks up and delivers. If a service is used, the family or responsible party will need to make sure that the dry cleaning is ready to be picked up by the service.

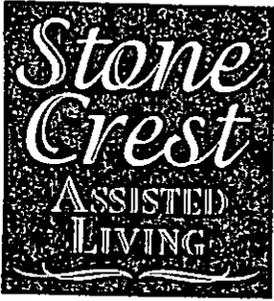
The obligations and undertaking of this handbook shall be that of the resident and/or designated representative jointly and severally, and shall bind the resident and/or designated representative, and their heirs, personal representative, successors, and assigns.

Resident/Designated Representative Signature

Date

Facility Representative Signature

Date



Stone Crest Assisted Living

a program of Baruch Senior Ministries

INCOME BASED PROGRAM – 2010

The mission of Baruch Senior Ministries is to honor God by providing quality senior lifestyle services that promote the value and dignity of every person. It is a community designed to provide various levels of assistance with daily activities for seniors and disabled individuals in their home community close to friends and family.

As a Christian principled, non-profit organization, Baruch Senior Ministries is committed to providing care programs that are designed specifically for the needs of the residents from minimal assistance to more comprehensive care. Baruch Senior Ministries is unique in recognizing the importance and desire of a resident never wanting to move again. To meet this need, Baruch Senior Ministries has established an Income Based Program to provide peace of mind for a resident and their family concerned about a resident outliving their assets.

The Income Based Program will reduce the monthly rent of a resident to the amount of their income, allowing a resident to remain at Stone Crest Assisted Living as long as they wish. Stone Crest Assisted Living is licensed as an Adult Foster Care home with the State of Michigan; therefore Medicare and Medicaid do not cover room and board.

The following factors must be met by a resident to become eligible for the Income Based Program at Stone Crest Assisted Living:

1. A resident will have lived at Stone Crest Assisted Living and made a minimum of twenty-four (24) full monthly rent payments.
2. A resident will be required to apply for and be determined eligible for Medicaid. Michigan Department of Human Services (DHS) currently provides this benefit.
3. A resident will provide copies and information about all available income.
4. A resident will qualify for the Income Based Program beginning the calendar month after the date of notification of eligibility for Medicaid to Stone Crest Assisted Living.
5. A maximum of 25% of the available rooms at Stone Crest Assisted Living may be used for the Income Based Program at a given time.

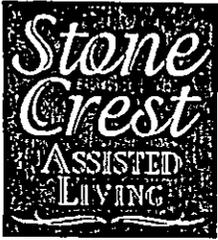
Medicaid eligibility does provide a personal care supplement payment to Stone Crest Assisted Living, currently set at \$192.38 per month. It also allows a resident a small monthly allowance for personal items, approximately \$44 to \$64.

We encourage residents and their families to discuss future needs and eligibility for the Income Based Program with the Administrator and to also contact the DHS to learn more about the Medicaid application and eligibility process.

We look forward to serving each resident and their family for as long as they desire to be part of the Baruch Senior Ministries family

Designated Representative: _____ Date: _____

Facility Representative: _____ Date: _____



Stone Crest Assisted Living a program of Baruch Senior Ministries

INCOME BASED PROGRAM – 2011

The mission of Baruch Senior Ministries is to honor God by providing quality senior lifestyle services that promote the value and dignity of every person. It is a community designed to provide various levels of assistance with daily activities for seniors and disabled individuals in their home community close to friends and family.

As a Christian principled, non-profit organization, Baruch Senior Ministries is committed to providing care programs that are designed specifically for the needs of the residents from minimal assistance to more comprehensive care. Baruch Senior Ministries is unique in recognizing the importance and desire of a resident never wanting to move again. To meet this need, Baruch Senior Ministries has established an Income Based Program to provide peace of mind for a resident and their family concerned about a resident outliving their assets.

The Income Based Program will reduce the monthly rent of a resident to the amount of their income, allowing a resident to remain at Stone Crest Assisted Living as long as they wish. Stone Crest Assisted Living is licensed as an Adult Foster Care home with the State of Michigan; therefore Medicare and Medicaid do not cover room and board.

The following factors must be met by a resident to become eligible for the Income Based Program at Stone Crest Assisted Living:

1. A resident will be required to apply for and be determined eligible for Medicaid. Michigan Department of Human Services (DHS) currently provides this benefit.
2. A resident will provide copies and information about all available income.
3. A resident will qualify for the Income Based Program beginning the calendar month after the date of notification of eligibility for Medicaid to Stone Crest Assisted Living.

Medicaid eligibility does provide a personal care supplement payment to Stone Crest Assisted Living, currently set at \$192.38 per month. It also allows a resident a small monthly allowance for personal items, approximately \$44 to \$64.

We encourage residents and their families to discuss future needs and eligibility for the Income Based Program with the Administrator and to also contact the DHS to learn more about the Medicaid application and eligibility process.

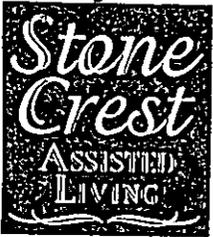
We look forward to serving each resident and their family for as long as they desire to be part of the Baruch Senior Ministries family.

Designated Representative: _____ Date: _____

Facility Representative: _____ Date: _____

Baruch Senior Ministries is a 501(c)(3) nonprofit organization. Individual contributors may take a tax deduction for charitable contributions to organizations qualifies as exempt under Section 501(c)(3) of the Internal Revenue Code.

EXHIBIT E



Stone Crest Assisted Living

a program of Baruch Senior Ministries

INCOME BASED PROGRAM – 2012

The mission of Baruch Senior Ministries is to honor God by providing quality senior lifestyle services that promote the value and dignity of every person. It is a community designed to provide various levels of assistance with daily activities for seniors and disabled individuals in their home community close to friends and family.

As a Christian principled, non-profit organization, Baruch Senior Ministries is committed to providing care programs that are designed specifically for the needs of the residents from minimal assistance to more comprehensive care. Baruch Senior Ministries is unique in recognizing the importance and desire of a resident never wanting to move again. To meet this need, Baruch Senior Ministries has established an Income Based Program to provide peace of mind for a resident and their family concerned about a resident outliving their assets.

The Income Based Program will reduce the monthly rent of a resident to the amount of their income, allowing a resident to remain at Stone Crest Assisted Living as long as they wish. Stone Crest Assisted Living is licensed as an Adult Foster Care home with the State of Michigan; therefore Medicare and Medicaid do not cover room and board.

The following factors must be met by a resident to become eligible for the Income Based Program at Stone Crest Assisted Living:

1. A resident will have lived at Stone Crest Assisted Living and made a minimum of twenty-four (24) full monthly rent payments.
2. A resident will be required to apply for and be determined eligible for Medicaid. Michigan Department of Human Services (DHS) currently provides this benefit.
3. A resident will provide copies and information about all available income.
4. A resident will qualify for the Income Based Program beginning the calendar month after the date of notification of eligibility for Medicaid to Stone Crest Assisted Living.
5. A maximum of 25% of the available rooms at Stone Crest Assisted Living may be used for the Income Based Program at a given time.

Medicaid eligibility does provide a personal care supplement payment to Stone Crest Assisted Living, currently set at \$192.38 per month. It also allows a resident a small monthly allowance for personal items, approximately \$44 to \$64.

We encourage residents and their families to discuss future needs and eligibility for the Income Based Program with the Administrator and to also contact the DHS to learn more about the Medicaid application and eligibility process.

We look forward to serving each resident and their family for as long as they desire to be part of the Baruch Senior Ministries family

Designated Representative: _____ Date: _____

Facility Representative: _____ Date: _____

Baruch Senior Ministries is a 501(c)(3) nonprofit organization. Individual contributors may take a tax deduction for charitable contributions to organizations qualifies as exempt under Section 501(c)(3) of the Internal Revenue Code.

**STATE OF MICHIGAN
IN THE SUPREME COURT**

BARUCH SLS, INC.,

Petitioner-Appellant,

vs.

TOWNSHIP OF TITTABAWASSEE,

Respondent-Appellee.

Supreme Court Docket No. 152047

Court of Appeals Docket No. 319953

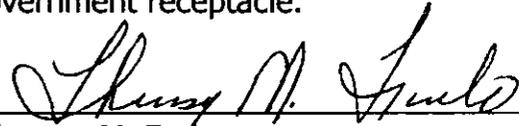
Michigan Tax Tribunal
Docket No. 0395010 & 0415093

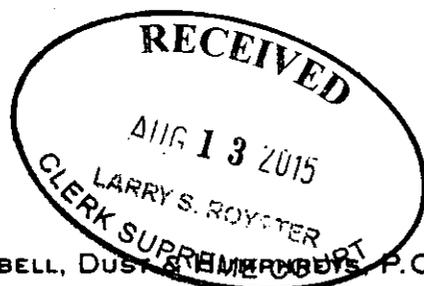
RHOADES MCKEE, P.C.
By: GREGORY G. TIMMER (P39396)
TERRY L. ZABEL (P53798)
Attorneys for Petitioner-Appellant
55 Campau Ave., NW
Suite 300
Grand Rapids, MI 49503
(616) 235-3500

HUMPHREYS, CAMPBELL, DUST
& HUMPHREYS, P.C.
By: GARY R. CAMPBELL (P36596)
Attorneys for Respondent-Appellee
5090 State Street
Building A, Suite One
Saginaw, MI 48603
(989) 792-2552

PROOF OF SERVICE

Theresa M. Furlo, being duly sworn, deposes and says that on the 12th day of August, 2015, she mailed a copy of Respondent-Appellee's Response to Application for Leave to Appeal by Petitioner-Appellant with Proof of Service, with respect to the above matter to: Gregory G. Timmer, Rhoades McKee, P.C. 55 Campau Ave., NW, Suite 300, Grand Rapids, MI 49503, by placing same in an envelope, postage fully pre-paid, addressed as above, and depositing same in a government receptacle.


Theresa M. Furlo



HUMPHREYS, CAMPBELL, DUST & HUMPHREYS, P.C.

HUMPHREYS, CAMPBELL, DUST & HUMPHREYS, P.C.

ATTORNEYS AND COUNSELORS AT LAW

BUILDING A, SUITE ONE

5090 STATE STREET

SAGINAW, MICHIGAN 48603

B. J. HUMPHREYS

GARY R. CAMPBELL

TOBIN H. DUST*

JOHN D.L. HUMPHREYS

*ALSO MEMBER OF WISCONSIN BAR

(989) 792-2552

FAX (989) 792-3881

E-MAIL: lawyers@hcdh-law.com

August 12, 2015

Clerk of the Court
Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa Street
Lansing, MI 48913

Via Overnight Mail

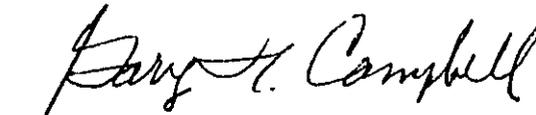
RE: *Baruch SLS, Inc. v. Township of Tittabawassee*
Court of Appeals No. 319953
Michigan Tax Tribunal Nos. 0395010 & 0415093

Dear Sir / Madam:

Enclosed for filing with regard to the above-referenced matter please find the original and seven copies of Respondent-Appellee's Response to Application for Leave to Appeal by Petitioner-Appellant with Proof of Service.

Thank you for your attention to this matter.

Very truly yours,
HUMPHREYS, CAMPBELL, DUST
& HUMPHREYS, P.C.


GARY R. CAMPBELL

GRC/tmf

Enclosures

cc: Gregory G. Timmer, Attorney for Petitioner/Appellant (w/encs.)
Frank Roenicke, Tittabawassee Twp. Assessor (w/encs.)

