

TAX**MICHIGAN PROPERTY TAX EXEMPTION FOR CHARITABLE INSTITUTIONS IS AGAIN CONSTRUED BROADLY BY THE STATE SUPREME COURT.**

by Robert F. Rhoades

Executive Summary

Property owned and occupied by charitable institutions solely for their charitable purposes is exempt from Michigan property tax. Some assessors denied exemptions to charities that charged fees for their services, arguing that they were acting like a business. In 2006, the Michigan Supreme Court clarified the rules concerning the exemption for charities and reaffirmed that a charity may charge for its services and that there no required monetary threshold of charity required. If the "overall nature" of the institution is charitable, the entity can qualify as a charity regardless of how much money it devotes to charitable activities in a particular year. The Court provided six guidelines for determining whether an entity is a charity. The third guideline was that the entity not discriminate among those intends to be served. Some assessors and the tax tribunal construed that as requiring that applicants for the charitable exemption not discriminate based on ability to pay. By this logic, while a charity could charge for services, it would be required to offer free or subsidized services to those who could not afford the charge. Admissions or other services would effectively have to be made on a first come first served basis.

In *Baruch SLS, Inc v Tittabawassee Township*, __ Mich__; 2017 WL 2818133 (Docket 152047, 6-28-2107), the Michigan Supreme Court clarified its third guideline for the charitable entity exemption adopting a broad reasonable basis analysis by which to judge restrictions which a charity may impose on the charitable services it offers. Restrictions need only bear a reasonable basis to the purposes of the charitable entity and charitable entities have substantial flexibility in establishing their selection criteria. Importantly, the Court instructed that the third criterion does not preclude charging for services and denying service to those who cannot pay the charges. The decision is potentially helpful to all charities that charge for their services.

The Statutory Exemption

MCL 211.7o(1) provides Michigan's property tax exemption for charities as follows:

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 Lead case, *Wexford*, Provided Six Guidelines for a Charitable Institution

Following a review of earlier decisions, the Court provided six guidelines for determining whether an entity is a charitable institution for purposes of the property tax exemption:

1. A "charitable institution" must be a nonprofit 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 Med Group v City of Cadillac, 474 Mich 192, 215 (2006)

Baruch SLS, Inc v Tittabawassee Township Provides Further Guidance on the Discrimination Test

Baruch requested exemption based on the fact that it offered an income-based subsidy to qualifying residents of Stone Crest Assisted Living, one of its adult foster care facilities, provided those residents had made at least 24 monthly payments to petitioner. The Tax Tribunal ruled that petitioner did not meet the anti-discrimination test of *Wexford* and the Court of Appeals affirmed. The Supreme Court on application for leave to appeal and in lieu of granting leave to appeal vacated the decision and remanded.

Tax Tribunal and the Court of Appeals had construed the anti-discrimination requirement as requiring exemption applicants make their services available without regard to ability to pay. While a fee could be charged to those who could afford it, the exemption applicant could not turn away someone who could not afford to

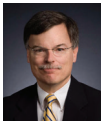
pay. To do so discriminated among those intended to be served by the organization's charity. Applying that logic, organizations would have to consider applicants for their services on a first come first serve basis regardless of ability to pay. While acknowledging that the wording of its *Wexford* decision could lead to that conclusion, the Court rejected that conclusion, as unsustainable, and inconsistent with the other guidelines. The court held that any analysis of fees should be undertaken under the fifth test, not the discrimination test.

The *Wexford* discrimination test is intended to exclude organizations that discriminate by imposing purposeless restrictions on the beneficiaries of the charity – restrictions that bear no reasonable relationship to an organization's legitimate charitable goals. The legitimate goals of a charity are stated in test four. The "reasonable relationship" test should be construed quite broadly to prevent unnecessarily limiting the restrictions a charity may choose to place on its services. Thus Baruch's requirement that an individual be a resident and make 24 monthly payments before being accepted into its charitable Income Based Program would violate the third *Wexford* test only if that restriction were not reasonably related to a permissible charitable goal under factor four. Because the Tax Tribunal and the Court of Appeals decisions were based on an incorrect understanding of *Wexford* factor three, the Court vacated those portions of the opinions discussing the third factor and remanded this case to the Tax Tribunal for further proceedings. On August 22, 2017, the parties stipulated that the third test was met because the restriction requiring 24 months of paid service was reasonably related to the charitable purpose of the organization. The Tribunal entered a judgment on August 29, 2017. (*Baruch, supra*, MTT No. 13-001360-TT.)

The decision in *Baruch* is helpful to charitable institutions that charge fees for their services.

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Robert F. Rhoades is a member in Dickinson Wright's Detroit office. He can be reached at 313.223.3046 or rrhoades@dickinsonwright.com.