



Michigan Supreme Court Clarifies Test for Charitable Exemption from Property Taxes

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In an Opinion issued on June 28, 2017, in *Baruch SLS, Inc v Tittabawassee Township* (Sup. Ct. No. 152047), the Michigan Supreme Court clarified the third prong of the six-part test set forth in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), which governs charitable institutions seeking an exemption from real and personal property taxes under MCL 211.70 and MCL 211.79.

In *Baruch*, the taxpayer operated an adult foster care facility with an “income based” program, which required applicants to have made a minimum of 24 full monthly payments before being eligible for a reduced room rate. The Michigan Tax Tribunal denied the taxpayer’s request for a property tax exemption, finding that the taxpayer failed to satisfy the third prong of *Wexford Medical Group*, which requires that the charitable institution “does not offer its services on a discriminatory basis by choosing who among the group deserves the services, but rather, serves any person who needs the particular type of charity.” The Tribunal found that the taxpayer’s admissions policy differentiated between individuals with and without the ability to pay and therefore offered its charity on a discriminatory basis in violation of the third factor. The Court of Appeals affirmed that portion of the Tribunal’s judgment, also finding that the taxpayer’s policy was discriminatory.

The Michigan Supreme Court reversed the Tribunal and Court of Appeals for further proceedings and offered clarification of the third factor. Although the Court noted that the language of *Wexford* was “susceptible” to the lower courts’ interpretation, the Court held that the third factor “ban[s] restrictions or conditions on charity that bear no reasonable relationship to an organization’s legitimate charitable goals.” This “reasonable relationship” test is to be construed “quite broadly to prevent unnecessarily limiting the restrictions a charity may choose to place on its services.” By way of example, the Court explained that a low-cost daycare could “reasonably prioritize the applications of single-parent families,” but likely could not prioritize the

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applications of families who cheer for a certain baseball team – unless that criterion is reasonably related to a permissible charitable goal (i.e., if there is a scholarship funded by that baseball team’s charitable foundation).

The Court also discussed how factors four and five should be addressed. The *Wexford* factors with the nuances of the *Baruch* decision are summarized as follows:

1. The institution must be a nonprofit institution.

Baruch does not modify this factor.

2. The institution must be organized chiefly, if not solely, for charity.

Baruch does not modify this factor.

3. The institution does not offer its charity on a discriminatory basis by choosing who among the group it purports to serve deserves the services but rather serves any person who needs the particular type of charity being offered.

Baruch held that this factor is “intended to exclude organizations that discriminate by imposing purposeless restrictions on the beneficiaries of the charity.” The correct interpretation of this factor is that a charitable institution may not impose restrictions or conditions on charity that “bear no reasonable relationship to an organization’s legitimate charitable goals.”

4. The 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.

Baruch held that “whether a charitable institution has a permissible charitable goal is evaluated in factor four[.]” If the institution’s restriction is reasonably related to a goal that meets this standard, then it is acceptable under factor three.

5. The institution does not charge for its services more than what is needed for its successful maintenance.

Baruch held that the analysis of a charitable institution’s fees should be conducted under this factor, not factor three.

6. The institution need not meet any monetary threshold of charity if the overall nature of the institution is charitable.

Baruch does not modify this factor.

Laura J. Genovich of Foster Swift filed *amicus curiae* briefs in *Baruch* on behalf of the Michigan Townships Association, Michigan Municipal League, Michigan Association of Counties, Michigan Association of School Boards, and the Public Corporation Law Section of the State Bar of Michigan. If you have questions about the



Baruch decision, please contact Laura at (616) 726-2238 or lgenovich@fosterswift.com.