

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Mala Sundar
JUDGE

R.J. Hughes Justice Complex
P.O. Box 975
25 Market Street
Trenton, New Jersey 08625
Telephone (609) 943-4761
TeleFax: (609) 984-0805
taxcourttrenton2@judiciary.state.nj.us

September 3, 2014

BY ELECTRONIC MAIL

Harry Haushalter, Esq.
Lexington Square Commons
2119 Route # 33, Suite A
Hamilton Square, New Jersey 08690

Patrick E. Bradley, Esq.
Benjamin R. Kurtis, Esq.
Reed Smith, L.L.P.
136 Main Street, Suite 250
Princeton, New Jersey 08540

Re: Township of Cranbury v. Princeton Ballet Society
Block 23, Lot 59
Docket Nos. 010651-2012; 012522-2013

Dear Counsel:

This letter constitutes the court's decision in connection with the parties summary judgment motions. The issue is whether the above captioned property ("Subject") in which PBS operates a dance school under the name Princeton Ballet School, is tax exempt as being for the "moral and mental improvement of men, women, and children" (hereinafter "MMI" or "MMI exemption"). Defendant ("PBS") claims exemption on grounds the dance school is operated as part of PBS' overall activities of performing ballet for the public by its division the American Repertory Ballet ("ARB"); teaching ballet to children attending the New Brunswick schools

through a private-public partnership with the New Brunswick school district and offering some of these children scholarships to continue learning dance at PBS dance studios under PBS' "Dance Power" program; demonstrating ballet at certain schools through an outreach program; and holding certain community events in Princeton where the art of ballet is explained to the public under its "On Pointe" program. Per PBS, all of these activities would be deemed as qualifying for the MMI exemption under Chester Theatre Group v. Borough of Chester, 115 N.J. Super. 360 (App. Div. 1971) and Paper Mill Playhouse v. Township of Millburn, 95 N.J. 503, 506-07 (1984) (hereinafter "theater exemption cases"). PBS alternatively maintains that regardless of these overall activities, the Subject should be exempt because it is used to teach ballet, and education, standing alone, is an activity entitled to the MMI exemption.

The Township argues that irrespective of PBS' other activities at other locations, or elsewhere, the Subject is used purely as a dance school which charges tuition at or above market rates and follows a dance curriculum similar to competing for-profit dance schools. Per the Township, this is a commercial activity at the Subject which should not immunize it from tax.

For the reasons following, the court finds that PBS' organizational documents establish it as being created to foster an interest among, and educate the general public in, dance and ballet as an art form, which are activities recognized as being for the MMI of the general public under the theater exemption cases. However, based on the undisputed facts, the Subject is not actually used for any theater or community entertainment/educational activities which were recognized as qualifying for the MMI exemption in the theater exemption cases. Rather, the Subject is a dance studio which is used almost exclusively for dance classes which have a similar curriculum to commercial dance schools and for which the students must pay commercial rate fees. The fact

that the lessons serve to educate these students in ballet dancing does not automatically exempt the Subject's use from local property tax.

Therefore, the Subject is ineligible for the MMI exemption regardless of PBS' theater or community activities elsewhere. The Township's motion for partial summary judgment is granted. The judgments of the Middlesex County Board of Taxation ("County Board") granting the Subject tax exemption are reversed.

FACTS

(A) Subject's Description and Use

PBS is the owner of the Subject which is located at 29 North Main Street in the Township. The Subject comprises 0.22 acres and is improved with a one-story building which measures 4,704 square feet. Access to the Subject is shared with a municipal building which houses the assessor's office, the Elementary/Middle School, and the public library. The Subject is about 90 feet north of the access drive to these municipal facilities.

PBS has owned the Subject since 1999. It obtained a zoning use variance in June 1999 (due to change in location) to permit operation of a ballet dance studio where students could continue to learn and train in ballet.¹ The January 2000 temporary certificate of occupancy issued by the Township's construction official showed the use as "Dance School."

PBS operates a dance school under the name Princeton Ballet School at the Subject. Students are primarily school-age children. The Subject has two dance studios, each containing mirrors, dance equipment, a piano, bars/railing and specialized floors required for teaching ballet. The back entrance has a waiting area/public lobby. Towards the front entrance is the

¹ The Subject was originally used as a garage-type property which had been used to store cars.

office space and changing room for the faculty, along with the janitorial area. There are also separate facilities and dressing rooms for boys and girls.

The only form of dance taught at the Subject is ballet. Prospective students are provided an “assessment” class. Based upon their level of talent or expertise, they are placed in classes of corresponding levels (such as Hand-In-Hand, Beginner, Intermediate, Student Plus, Cardio Ballet). A student is not rejected from studying further after an assessment class. Rather, he or she is placed in the level PBS deems appropriate. Each level requires a certain period of enrollment ranging from 8 weeks to 34 weeks (the dance school’s “academic year”).

Dance classes are conducted at regularly scheduled times from Monday to Saturday (but not during the entire day) each week. Annual recitals for the students are held at another facility. The dance curriculum is similar and comparable to that offered by the for-profit dance schools in the vicinity such as the Princeton Dance & Theatre; Princeton YMCA; Lustig Dance Theater (New Brunswick); and Princeton Dance Theatre (in the Forrestal Village retail shopping center). PBS acknowledged these schools as its competitors.

Tuition ranges from \$16.67 to \$38.75 per hour.² Amounts charged for the assessment class are credited towards tuition if the child decides to become a student, which occurs after submitting registration forms. The tuition is fixed for a particular level, but the amount can increase due to the number of classes taken for that level (example, two classes a week instead of one). Fees are non-refundable except under exceptional circumstances. PBS did not claim that its tuition structure is anything less than the prevailing market or competitive rates.³

² There are additional charges for uniforms.

³ The Township’s assistant assessor certified that per information from websites and her personal visits to the locations, the Princeton Dance & Theatre’s fees were about \$12.30 to \$30 per hour, and that it had a non-profit related entity, Dancevision, Inc., which presented dance performances for the general public. She compiled a list of four other for-profit children’s dance schools in the Mercer/Middlesex county areas, which charged fees ranging

The activity at the Subject consists of children being dropped off to, and picked up from, dance lessons. Professional or other dance performances for the public are not held at the Subject. There is no stage at the Subject. The parking area and the Subject's size does not allow for the staging or public attendance of dance performances or productions. Once a year, on the "Cranbury Day" organized by local merchants to advertise and market their products/services, PBS' dance school offers free demonstrations of its dance lessons to the public. These are performed by advanced students at the Subject, who are not paid.

For 2011, the Subject was managed by three directors: a Managing Director whose duties included overseeing plus marketing/communications; a School Director whose duties were directing the school and programs; and a School Principal whose duties were responsibility for the operations at the Subject. Also included were three faculty members who taught ballet during the school year and summer; three desk workers who functioned as receptionists; and seven accompanists who played piano for the classes.

During 2011, the Managing director had a 12 hour-week at the Subject and was paid about \$74,000. The School Director put in the same time and was paid \$75,500. The School principal put in 30 hours a week for a salary of \$52,000. Faculty members are generally paid by the hour (\$30-\$40). Accompanists are paid about \$25 an hour and work either 60 hour/week for a 34-week academic year or 80 hours/week for "summer intensive" programs. Receptionists are paid about \$13 per hour and work either 30 hours/week for a 34-week academic year or 40 hours/week for "summer intensive" programs.

from a low of \$4.76 to a high of \$32 per hour, indicating that PBS' fees at the Subject were highest when compared to its competitors. These schools included Dance Corner (West Windsor); Stewart Johnson Dance Academy (Hamilton); All for Dance (Robbinsville); Galaxy of Dance (Robbinsville). Dance Corner also had a related non-profit entity "The West Windsor Plainsboro Dance Company, Inc." which performed dance presentations for the general public. While PBS maintained that this information was inadmissible double hearsay, it did not contest that its fees for dance lessons as shown on its website was incorrect or not market rates.

Some staff work at multiple locations. For instance, the Managing Director oversaw the overall operations of PBS as a whole, not just for the Subject. Such staff are allocated to “primary” and “secondary” locations based on where they spend the majority of their “rehearsal time.” Princeton is the primary location, while the Township and New Brunswick are the secondary locations. For purposes of this litigation, PBS showed the wages of the above staff as allocable to the Subject and as general estimates due to their rotation. Thus, the estimated allocated wage amounts are not necessarily representative of a staff member’s entire salary.⁴

PBS’ Executive Director deposed that tuition revenues from all three school locations are part of a larger budget used for dance lesson costs and possibly for the outreach program.

(B) PBS’ Organization and Operations

PBS was organized in 1954 as a non-profit entity, and is federally tax exempt under I.R.C. §501(c)(3). Its original Certificate of Incorporation states that it is organized:

- (1) To establish in the Princeton Community a cultural and educational organization which will foster interest in the dance as an art.
- (2) To conduct classes in ballet, modern, ethnologic, folk or other forms of dance within the general purposes of the Society.
- (3) To offer performances, lectures, and demonstrations in the field of dance or the allied arts, and to further the general educational purposes of the Society by sponsoring performances by individual artists and dance groups.
- (4) To foster greater public interest in the arts allied with the dance through support of and participation in the activities of other groups or organizations formed for similar purposes [and that]
- (5) The corporation shall not be operated for profit and all funds coming into the hands of the corporation shall be used solely for the benefit of said Society and the furtherance of its corporate purposes, and no part of the net earnings of the corporation shall inure to the benefit of any private individual.

⁴ Wages allocated to the Subject for the three faculty members were \$8,160; \$16,445 and \$15,340. PBS’ director clarified that although her entire salary was allocated to the Subject, she was in charge of the overall operations of all three locations, and divided her time and job efforts between all three locations.

The by-laws (amended from time to time) provide almost similarly. The 2010 by-laws provide that the “Purpose of the Corporation”⁵ was:

- (1) To establish a cultural and educational organization which will foster interest in dance as an art form;
- (2) To conduct classes in ballet, modern, jazz, theatrical folk dance and other forms of dance within the general purposes of the Corporation;
- (3) To offer performances, lectures and demonstrations in the field of dance or the allied arts and to further the general educational purposes of [PBS] by sponsoring performances by individual artists and dance groups;
- (4) To foster greater public interest in the arts allied with the dance through support of, and participation in, the activities of other groups or organizations formed for similar purposes;
- (5) To operate as a nonprofit corporation, with all funds coming into the Corporation to be used solely for the benefit of said Society and the furtherance of its charitable purposes, and no part of the net earnings of the Corporation shall inure to the benefit of any private individual.⁶

The Certificate of Incorporation provides that upon dissolution, assets remaining (after payment of all debts) are to be distributed to a non-profit organization to have same or objectives similar to PBS, as determined by the Board of Trustees. PBS’ 2003 federal tax return (Form 990) explains that the “tuition, fees, and production” the primary income sources, help accomplish its exempt purpose by providing “training to students and quality performances to the community.”

PBS offers dance classes under the name Princeton Ballet School. Classes are offered for children and adults. In addition to the Subject, lessons are taught at dance studios in Princeton and New Brunswick.

⁵ The 2010 by-laws referred to PBS as either “Corporation” or as “The Princeton Ballet Society.”

⁶ The 2010 by-laws do not limit the establishment of a cultural organization to “the Princeton Community” in paragraph 1, and further uses “charitable purposes” in paragraph 5 as opposed to “corporate purposes” in contrast to the Certificate of Incorporation. The by-laws note that if its recited purposes conflict with those listed in the Certificate of Incorporation, the latter controls.

The ARB presents professional ballet dance performances to the general public.⁷ It is comprised of about 16 professional dancers. These dancers perform at various venues such as the McCarter Theater (in Princeton), the New Jersey State Theatre (in New Brunswick), and at times in New York City. No performances by ARB have been or are held at the Subject. The dancers are not students of PBS. They are paid by PBS for their performances. Their salary is determined by PBS' artistic director, who employs the dancers based on their talents. The dancers are not assigned to or categorized as being assigned to the Subject for payroll purposes.

Once a year, several children, who are students of PBS (at all locations), may be invited to join the professional dancers in ARB's annual performances of The Nutcracker ballet in Princeton at the McCarter Theater.⁸ If needed, a student may be invited to participate in other full length ballets with the professional dancers performed at public venues. Rehearsals for the public performances occur occasionally at the Subject at no fixed schedules. At times, the choreography and/or production value piece of the professionals' dance piece (i.e., projects involving the preparation of sets and costumes) occur at the Subject.

ARB's performances are offered to the public for a charge. The amounts were not provided to the court. Per PBS' officer's certifications, discounted tickets are offered to seniors, schools or charitable organizations. The discount amounts were not provided to the court.

The New Jersey State Council of Arts designated the ARB as a "Major Arts Institution." PBS received grants from the government of about \$180,000 since 2010.

In New Brunswick, PBS offers a program called "Dance Power" for the children attending the New Brunswick public schools. It is unknown whether PBS charges the schools

⁷ ARB is not organized as a separate or independent corporate entity. Per PBS' executive director, the "whole entity does business as" ARB "even the school within it." Sometime in 2006 PBS filed a document with the State applying for registration of ARB as an alternate name to PBS.

⁸ Of the 104 children who performed in The Nutcracker, 36 were students at the Subject.

for the same or whether the children pay for the same directly to PBS. The program offers 20 weeks of dance classes taught by PBS, presumably at the schools, but not at the Subject. At the end of the program, PBS offers scholarships to some students to continue their study with the Princeton Ballet School at any of their locations. Scholarships are based on the need, talent, and PBS' budget and not on any quota system.⁹ Scholarship students decide as to where they will attend classes based on the student's schedule and location.

PBS undertakes an "outreach" program whereby it provides group dance education and performances (performed sometimes by the professional dancers and sometimes by the advanced PBS students) to students of some public or private schools. These are designed to further students' awareness of PBS and so that students can experience the "joy and beauty of ballet." PBS does not distribute flyers or literature, or make any public announcement in this regard. PBS' director claimed that "some of the preparation for those activities happens" at the Subject, however, there was no clarification or other evidence of substantiating the same.

PBS' "On Pointe" program is a free community event held in Princeton. Through this, PBS provides insight into the world of ballet through discussions of the choreography process, lectures on the music of a particular ballet, or explanations on excerpts from particular ballets. No such program was or is held at the Subject.

As of fiscal years ending ("FYE") on June 30, 2010, 2011, 2012, and 2013, PBS' major source of revenue was from dance tuitions which totaled \$1.82 million; \$1.95 million; \$2.01 million; and \$2.1 million, respectively. During the same period, the amounts received from ARB's professional performances were about \$328,000 (2010); \$332,000 (2011); \$348,000 (2012); and \$419,000 (2013). Government grants accounted for about \$175,000 (2010);

⁹ For 2013, the budget for scholarships was about \$160,000.

\$204,000 (2011); \$179,000 (2012); and \$195,000 (2013). Contributions accounted for approximately \$460,000 (2010); \$331,000 (2011); \$375,000 (2012); and \$439,000 (2013). Receipts from “Education/Outreach” were \$102,000 (2010); \$80,400 (2011); \$81,250 (2012); and \$118,000 (2013). For each year, “program costs” totaled about \$2.8 million; \$2.6 million; \$2.6 million; and \$2.7 million, respectively for FYE 2010-2013 respectively. There was no explanation of what comprised “program costs.” After deduction of “general and administrative” costs (\$305,000; \$218,000; \$232,000 and \$366,000 for FYE 2010-2013 respectively) and fundraising costs (\$135,000; \$145,000; \$150,665; \$169,000 for FYE 2010-2013 respectively), PBS had a net loss for FYE 2010 and a net profit in other years. There was no explanation of what was comprised in the general/administrative or fund raising costs.

PBS’ Director of Finance certified that any revenue generated through use of the Subject (as well as from other activities by PBS as a whole) “is returned to the organization and is not paid as a dividend or profit to any person.”

PROCEDURAL HISTORY

PBS filed an Initial Statement seeking tax exemption under N.J.S.A. 54:4-3.6. It noted that the Subject was being used entirely as a “dance/performing studio” and that no commercial business was being conducted on the premises.

By letter of February 13, 2006, the Township’s assessor denied the requested exemption. The decision was based on a “review of” PBS’ application “and subsequent recommendation by the” Township’s counsel.

PBS filed a timely petition with the County Board which granted the requested exemption by its judgment of June 26, 2006. Thereafter, the Subject remained on the tax exempt list, including for the instant tax years.

In 2009, the assessor requested additional information regarding use of the Subject by PBS. Based on the information received, the Township, at the request of the assessor, filed petitions with the County Board challenging the Subject's exemption status for 2012 and 2013. The petitions were dismissed by the County Board. These appeals followed. The assessor certified that it was his "decision" to have the court rule on the issue of the Subject's tax exemption rather than placing the Subject on the "regular tax list" so that both parties reduced their financial exposure.

ANALYSIS

(A) Appropriateness of Summary Judgment

Summary judgment will be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

The issue is whether the Subject is exempt from local property tax. The material facts for purposes of resolution of this issue are undisputed. Therefore, summary judgment is appropriate.

(B) MMI Exemption

Certain established principles govern this analysis. Tax exemption statutes are strictly construed against those claiming exemption because of the compelling public policy that each property bear its fair share of the burden of taxation. Paper Mill, supra, 95 N.J. at 506-07, 524. The burden of persuading the court that a tax exemption is merited is on the claimant, "even when the county board has granted exemption and the appeal is by the municipality." Borough of Woodstown v. Friends Home at Woodstown, 12 N.J. Tax 197, 203 (Tax 1992).

The MMI exemption is allowed for buildings which are “actually used in the work of . . . corporations organized exclusively for the” MMI of the general public. N.J.S.A. 54:4-3.6. It is limited to the “portion of” the building actually used for MMI, and therefore, not allowed for portions “used for purposes which are not themselves exempt from taxation.” Ibid. Further, the land and/or buildings, or the entities using and occupying them for the tax-exempt purposes should not be “conducted for profit;” the entity claiming the exemption for a property must (i) own that property; and (ii) be incorporated under New Jersey laws and be “authorized to carry out the purposes” for which the “exemption is claimed.” Ibid. There is no dispute that PBS owns the Subject and is incorporated as a New Jersey non-profit entity.

In Paper Mill, the Supreme Court delineated the MMI statute’s requirements into a three-part criteria: (1) a corporation must be “organized exclusively for” the MMI of the general public; (2) the corporation’s “property must be actually and exclusively used for the tax-exempt purpose;” and (3) the entity’s “operation and the use of its property must not be conducted for profit.” 95 N.J. at 518. Due to change in the law, the second prong of the test is satisfied if the property or a portion of it is “actually used” for the tax-exempt purpose.¹⁰

(C) Analysis of MMI Exemption Factors

(1) Is PBS organized exclusively for the MMI of the general public?

Both theater exemption cases deemed organizational documents which recited the intent to foster interest and education in dramatic arts, as meeting the first prong. See Chester Theater, supra, 115 N.J. Super. at 365 (“dissemination of literary material through the dramatic arts and

¹⁰ L. 1985, c. 395; Statement to Assembly No. 2246 (1985) (purpose of the amendment was to extend the same treatment already provided to hospitals, namely, to “allow partial real property tax exemption for buildings partially used for their own charitable purposes and partially used for non-exempt purposes or leased to profit-making tenants,” thus, the exemption would “apply to that portion of any building actually used in connection with tax-exempt functions”).

the presentation of musical recitations advance the intellectual and social bases of man in general,” thus, is for the MMI of the general public); Paper Mill, supra, 95 N.J. at 513-14 (taxpayer’s “stated purpose, i.e., to promote ‘a greater interest in and a greater appreciation of art, music, drama, history, literature, education and the theater . . . by the presentation of concerts, drama, ballet and musical performances,’ is for the” MMI of the general public).

PBS’ Articles of Incorporation and bylaws list five purposes or objectives. The central reason for (or main purpose of) PBS’ existence is for the creation of a “cultural and educational” entity which will “foster” an interest in dance among the public. This was intended to be accomplished by “conduct[ing] classes” in ballet or other dances; educating the public through “performances, lectures and demonstrations” in dance either directly, or by PBS’ sponsorship; and by supporting/participating in art activities offered by entities similar to PBS.

The court finds that these purposes fit within a generally accepted common sense meaning of MMI of the general public and as construed by the above cited precedent. The allusion to dance classes in the organizational documents could conceivably be akin to the drama workshops in the theater cases whereby the general public can acquire education and foster their interest in the arts through participation (in addition to non-participatory education via attending performances). That such classes at the Subject are allegedly being offered and run similar to commercial for-profit dance schools does not mean that PBS when created, was not organized for MMI purposes. Rather, such an analysis is more appropriately addressed in prong two of the Paper Mill test. See Fountain House of New Jersey, Inc. v. Township of Montague, 13 N.J. Tax 387, 400-01 (Tax 1993) (generally, the “purposes stated in a corporation’s certificate of incorporation are reflective of purposes (intent) at the time of incorporation” which can change “over the course of time” and what is relevant are the “purposes pursued by a corporation” and

“the facts and circumstances surrounding the corporation’s operations . . . as of the applicable assessment date”).

Similarly unpersuasive is the Township’s allegation that PBS fails the first prong since the dance classes at the Subject benefit only the attending students. None of the purposes in the organizational documents is limited to a particular sector of society. Cf. New Jersey Ass’n of School Business Officials, Inc. v. Township of Hamilton, 22 N.J. Tax 467, 482 (Tax 2005) (organizational documents specifically limited services to a discrete section of society therefore entity was not organized “exclusively” for the MMI of the “general public” even if its activities indirectly benefitted the general public).

Based on the organizational documents, the court finds that PBS is organized exclusively for the MMI of the general public.

(2) Is the Subject “actually used” for the MMI of the general public?

Satisfaction of the first prong does not mean that the Subject is automatically tax-exempt. Nor does it insulate PBS’ use and operation of the Subject from further analysis in connection with its claim for a tax-exemption for the Subject. See Fountain House, supra, 13 N.J. Tax at 399-400 (“To examine merely the formalities of organization without examining the actual conduct (activities) of the corporation thereafter, would result in the elevation of form over substance” which could not have been “the legislature’s intent” in enacting “N.J.S.A. 54:4-3.6”).

In this connection, each property owned by an entity must be used (fully or partially) for a tax-exempt purpose. The particular property seeking an exemption must independently satisfy the actual use criteria of N.J.S.A. 54:4-3.6 rather than relying upon the general organizational purposes of the entity owning such property or upon activities conducted by that entity on other properties. Otherwise the term “actually used” is pointless. Thus, the fact that PBS operates

ARB, a professional dance company which performs for the public, or that ARB receives governmental grants for promoting culture, or that PBS may be conducting community activities elsewhere, does not mean that the use and operation of the Subject should be deemed as being for the MMI of the general public entitling the Subject to an exemption.

Based on the activities at the Subject, the court finds the Subject fails to satisfy the second prong of the Paper Mill test. The Subject is directly, primarily, and predominantly used for, and as, a dance school for children. It is operated as any other commercial dance school in this regard with similar curriculum and market rate tuitions. Cf. Advance Housing, Inc. v. Township of Teaneck, 215 N.J. 549, 573 (2013) (entity is “not a commercial enterprise” because, among others, it received rents “as determined by HUD, not by the private market”).

There are no public ballet performances at the Subject. ARB does not perform at the Subject for the general public’s entertainment or education. There are no PBS sponsored ballet dance performances at the Subject to educate or foster the public’s interest in ballet. Students taking lessons at the Subject (or elsewhere) do not perform for the entertainment/education of the general public. There is not even a stage or other performing area at the Subject for the public’s attendance. The Subject’s size (and its parking lot size) does not even permit holding theatrical public performances.

Community events are not held at the Subject whether sponsored by PBS or otherwise. There are no workshops, literary presentations, or educational seminars, lectures, and discussions designed to expose the general public to form and develop an interest in ballet or in dance as an art form at the Subject. The “On Pointe” program occurs only in Princeton. The annual student demonstrations during Cranbury Day are no more than a marketing or advertising device for and of locally available consumer services. PBS’ “outreach” program does not occur at the Subject.

The court is not persuaded that the dance classes at the Subject, which imitate a school-like agenda, enrollment, fixed tuition, academic year, and curriculum, are factually or substantively similar to the workshops offered in the theater exemption cases. Unlike at the Subject, the entities in those cases did not operate a school in a commercially competitive manner sans any public art performances at such school. Unlike the facts in those cases, there are no free programs or low cost ballet performances or presentations offered for the education or entertainment of the local or other school children. That the New Brunswick school-going children may be eventual attendees at the Subject on a scholarship under the “Dance Power” program does not convert the market rate tuition required of students attending the Subject any less market rate or free. That PBS’ by-laws intend to use all incoming funds in “furtherance of [PBS’] charitable purposes” does not make the dance classes at the Subject charitable, especially in light of the undisputed facts to the contrary.

For the same reasons stated above, the court also finds that the Subject is not “reasonably necessary” for PBS’ theater/community activities. This test was incorporated in Pingry Corp. v. Township of Hillside, 46 N.J. 457 (1966), where the Court interpreted the term “actually used” in the context of an exemption for faculty houses located on the school campus. It is equally instructive here since the MMI exemption is allowed under the same statute analyzed in Pingry and is similarly conditioned upon “actual use.”¹¹ See also Statement to Assembly No. 2246, supra (exemption would “apply to that portion of any building actually used in connection with tax-exempt functions”) (emphasis added).

¹¹ Similar to the current MMI exemption, N.J.S.A. 54:4-3.6 exempted buildings “actually used” for schools. Pingry, supra, 46 N.J. at 462. As was the MMI exemption, the schools exemption was originally for buildings “actually and exclusively” used as schools, but the exclusivity requirement was subsequently deleted. Ibid.

In determining “actual use” the Court examined the “absence of a profit-making arrangement . . . ; desirability of providing available housing at or near the school and whether the provision of housing . . . is reasonably designed to further the educational purposes of the school.” Pingry, supra, 46 N.J. at 463. If rented for a profit then, “the purpose to which the buildings are put can be said to only indirectly further the goals of the school and thus the finding of “actual use” cannot be found.” Ibid. If the rental was “secondary to the primary purpose of providing the housing for the faculty on the campus site and no profit is possible, an exemption can be justified.” Ibid.

The facts here do not lend themselves to a conclusion that the Subject is either proximate to, necessary for, or even used for any of PBS’ public theater or community activities. The occasional use of the Subject to prepare costumes or rehearse is de minimis and does not establish that the use of the Subject is either reasonably necessary or is fully integrated with and into PBS’ theater activities (public performances by ARB).¹² Nor are the opportunities to participate in ARB’s annual renditions of “The Nutcracker” (which are not performed at the Subject) which may be offered to some select number of students taking lessons at the Subject, evidence of inextricable integration or reasonable necessity. PBS’ claim that “some preparation” for its “outreach” program occurs at the Subject was vague and unsubstantiated. In any event, the facts show that the outreach program is an advertising mechanism whereby PBS seeks to attract the student population to join its dance classes since the general public is neither invited to these demonstrations nor is any literature distributed to the general public in this regard.

¹² This presupposes that ARB’s public ballet performances would merit tax exemption for PBS owned property which is used to present such public performances or conduct activities in connection with such performances pursuant to the theater exemption cases.

Even if, as argued by PBS, the dance tuitions from the Subject are commingled with other revenues and the whole “pot” of revenue is used to defray all of PBS’ expenses, this financial integration does not mean that the Subject is actually used for PBS’ alleged tax-exempt activities.¹³ See e.g. Princeton University Press v. Borough of Princeton, 35 N.J. 209, 216 (1961) (entity’s outside printing jobs were commercial in nature jeopardizing the entity’s tax exemption even if the funds were used to offset losses from the tax-exempt printing jobs for the university); Ironbound Educ. & Cultural Ctr., Inc. v. City of Newark, 8 N.J. Tax 540, 545 (Tax 1986) (“Qualification for exemption depends upon the use of the property, not the use of the funds”), aff’d, 220 N.J. Super. 346 (App. Div.1987) (charitable organization’s property not exempt where portion was leased to a commercial restaurant even though rental income was used to renovate the entity’s property), certif. denied, 110 N.J. 200 (1988). Although these cases were decided when the MMI exemption statute imposed an “exclusive” use requirement, and N.J.S.A. 54:4-3.6 was subsequently amended to remove the “exclusive” use requirement, the predicate for granting even a partial tax exemption continued to be that the subject property be used for a tax-exempt purpose. The amendment did not in any way create, grant, or extend the tax exemption to properties used for activities which, like the Subject’s use, were commercial in nature.

(i) Is the Subject’s use tax-exempt because dance classes educate the students?

PBS maintains that the Subject’s use qualifies for the exemption because dances classes are educational, and educational use, standing alone, suffices as being for the MMI of the general public. It relies upon Township of Bloomfield v. Academy of Medicine, 47 N.J. 358 (1966).

¹³ PBS’ argument in part presupposes that dance schools in its other two locations are MMI activities for the general public. The court makes no finding as to the activities at PBS’ other locations since the issue in this litigation is tax exemption for the Subject in the Township, hence, only whether the use of the Subject is for tax-exempt purposes. Notably, PBS never posited that ARB’s costs for annual ballet performances are barely covered by revenues from the ticket prices, contributions or governmental grants. The argument also presupposes that PBS’ “outreach” program is a tax-exempt activity. As already noted, the court is not so persuaded.

The Township agrees that the classes are educational to the students but maintains that since these students are a discrete section of the public, there is no “general public” benefit for purposes of applying the “actual use” test.

The Bloomfield case is distinguishable.¹⁴ There, the entity charged its members modest dues “to offset some of the costs of the review courses” and held symposiums/meetings where the “attendance was underwritten by” third parties. 47 N.J. at 364-65. It did “not compete with private enterprise nor [did] it primarily aid one segment of private enterprise.” Id. at 365. Additionally, the general public was allowed to use the large library (on the property) free of charge. None of these factors are present here. The dance curriculum offered by the Princeton Ballet School is similar to for-profit dance schools in the local area. Those schools are Princeton Ballet School’s competitors. PBS charges students (attending at the Subject) market rate fees.

The recent case where the Appellate Division held that the MMI exemption statute intended to encompass activities “of a ‘general educational purpose,’” is also distinguishable. See Int’l Schs. Servs. v. Township of West Windsor, 381 N.J. Super. 383, 386-87 (App. Div. 2005), rev’g and remanding 21 N.J. Tax 553 (Tax 2004), on remand, 24 N.J. Tax 453 (Tax 2009), aff’d on other grounds, 412 N.J. Super. 511 (App. Div. 2010), aff’d, 207 N.J. 3 (2011). First, that ruling was in the context of prong one of the Paper Mill test. Int’l Schs., supra, 381 N.J. Super. at 389 (court’s “holding . . . is limited to a determination that the tax judge mistakenly granted summary judgment in favor of the township on the first prong of the Paper Mill Playhouse test”).¹⁵ Here, this court has found that PBS satisfies prong one.

¹⁴ Notably, the Supreme Court in Paper Mill observed that “decisional law involving organizations [such as Bloomfield, supra] that were found to be organized for the [MMI] of men, women, and children [were] not especially illuminating” in deciding the theater’s entitlement to an exemption. Paper Mill, supra, 95 N.J. at 513.

¹⁵ The appellate court deemed the Tax Court’s comments on the “actual use” prong as “dictum” because summary judgment was decided only on the basis of the first prong. Int’l Schs., supra, 381 N.J. Super. at 389. In its original

Second, and more importantly, the entity there “often priced its services at below-market rates,” which rates were further reduced if a client lacked the financial ability to pay. 207 N.J. at 8. The entity also charged fees based on factors such as the client’s “size, the risk attaching to the region where the school was located, and the difficulty of providing educational services in that region” in addition to ability to pay. Ibid. Here, there are no such facts. Tuition is non-refundable except under exceptional circumstances. Nothing was established to show that there were tuition waivers for classes at the Subject (such as for a student who could not afford the tuition). The award of scholarships (only if PBS’ budget permitted) to some deserving New Brunswick school district students who attended PBS’ “Dance Power” program and who may or may not take further lessons at the Subject, does not render the fees charged to the other students as any something less than the market rates. The scholarship offers, limited to the “Dance Power” participants, are merely an incentive to attract and retain talented students at PBS, just as they are with any academic school or university. They do not render the dance school at the Subject so unique or different from its commercial competitors such that the Subject deserves preferential tax treatment.

Thus while Bloomfield, supra, and Int’l Schs., supra, (hereinafter the “education cases”) indicate that education is a MMI activity, the courts did not rest their analysis on this factor alone. Rather, those cases make it clear that other factors must be considered in analyzing whether an entity is entitled to an MMI exemption, such as, for instance, the entity’s provision of free or low cost education/access to educational material, and/or voluntary reduction of its economic potential or market participation (by charging zero or below market rates). Even in the

ruling the Tax Court had deemed the “actual use” issue as unripe for summary judgment because of the intertwining of use of the subject property between the tax-exempt entity and its related for-profit corporate entities. 22 N.J. Tax at 571-72.

theater exemption cases where the courts acknowledged that there was an educational aspect to entertainment, see Chester Theater, *supra*, 115 N.J. Super. at 366-67 (noting in *dicta* that the theater “may arguably also be exempt under the theory that it fulfills, either partially or totally, the community need for adult education in the arts”), they also found that the entities provided such education at “little or no cost,” *id.* at 366, or at a modest fee for the school children audience. Paper Mill, *supra*, 95 N.J. at 507. Indeed, the Court noted that the theater was not being commercially operated because “no commercial enterprise, whose essential purpose is to make money, [would] follow [the entity’s] policies.” *Id.* at 524. See also Advanced Housing, *supra*, 215 N.J. at 572 (“in making the fact-specific determination whether a non-profit corporation . . . is “actually” using property for a charitable purpose” the court is guided by principles such as the entity’s activities spare’s the government from the expense of doing the same, thus the exemption is a “quid pro quo” and “the private entity must not be engaged in a seeming commercial enterprise”). Not so here.¹⁶

Moreover, in Bloomfield, *supra*, there was undisputed public participation in the use of the subject property. Although the seminars and lectures were conducted predominantly for medical practitioners or medical students (at a modest fee), the library on the subject property was accessible to, and usable by, the public at no cost. See also City of Elizabeth v. Bayway Community Center, 19 N.J. Misc. 263 (Bd. of Tax Appeals 1941) (community center entitled to MMI exemption based on proof that the subject property was being used to “house a veritable multitude of activities, too numerous to recount here in detail, charitable, social and educational

¹⁶ Ticket sales for public theatrical performances, which was found to qualify as an MMI activity, accounted for 94% of the revenues in Paper Mill. 95 N.J. at 510. Here, income from “performances” for 2011 and 2012 were about 12% of the total revenues, and the bulk of the revenues were from dance tuitions.

in nature, for the benefit of thousands of working class families in the neighborhood of the property, at little or no cost whatever to such persons”).

Here, the Subject is visited by the parents (or those chauffeuring the children students) and the students themselves who (or whose parents) are financially able to afford the ballet lessons at the Subject. The “general public” as envisioned under the MMI exemption statute was never meant to be parents dropping children to and from their dance lessons. While these parents may feel pride, pleasure or satisfaction because they are able to afford ballet dance lessons for their child/children, and in the process, could be exposed to some aspects of ballet, such indirect or incidental benefit should not be deemed as a fulfillment of the MMI exemption requirement that there be a direct benefit of the “general public.” Nor should a teacher’s individual interest, pride or pleasure in tutoring a student in ballet at the Subject.

The ruling in Int’l Schools, supra, does not change the above analysis. There, and disagreeing with the Tax Court’s ruling that the MMI qualified services were being performed by plaintiff’s client, and not plaintiff, see, 24 N.J. Tax at 478-80, the Appellate Division held as follows:

The array of services provided by [plaintiff] helps improve the quality of education at international schools and provides a direct benefit--moral and mental improvement--to the students themselves, their families and their employers, as well as to the educators. We disagree with the Tax judge’s conclusion that such recipients were insufficient to qualify for the public service exemption. A property may qualify for the exemption without direct proof that the claimant’s activities improve any particular individuals morally or mentally. See Chester Theatre, [supra] (granting an exemption to a theater organization that presented dramatic offerings and music recitals). It cannot be said that theatre performances reach the public at large; they only reach those specifically interested in attending. Likewise, an organization such as ISS that promotes education by assisting international schools, corporations, teachers and parents will directly reach only those interested entities and individuals.

...
That [plaintiff] provided the services to the schools and not directly to the public is not fatal to its qualification on this prong

[Int’l Schs., supra, 412 N.J. Super. at 525-526]

However, the above holding should be read in the factual context and setting of that case. There, the entity performed several activities which essentially taught parent-organized international schools how to operationally emulate the American school system and provided faculty with information about other international faculty and the programs taught by them. This in turn, allowed the schools/teachers to offer quality American-style education to students abroad. Thus, in addition to the directly benefitted students, the parents and teachers were able to equally benefit from the entity's services.¹⁷ None of these facts are present here. Therefore, the direct benefit analysis in Int'l Schools simply does not apply here. The PBS' website contains detailed information about its dance curriculum, faculty, fees, and uniform requirements, does not equate to an education of the general public in the theory and practice of ballet as an art form for purposes of construing the MMI exemption. Rather, it is simply an advertisement of PBS' activities and services presented through electronic media.

If, as PBS argues, education, standing alone suffices for the actual use analysis since education benefits the student and anyone associated with that student (such as parent/s and/or teacher/s), then any learning center or entity which offers instruction in any particular discipline (such as, for instance, gymnastics, tennis, soccer, lacrosse, martial arts, tango, cheerleading, music, painting, ice-skating, computer programming, health clubs, fitness centers) for however short a period of time, at full or above market rate charges, will be eligible for the MMI exemption. Following this logic then, as long as the entity running the classes (or assists in

¹⁷ The entity's functions included informing potential local qualified faculty about the schools (via its website or its "wanted" advertisements); matching and placing such faculty (from its database and local recruitment fairs) with the international schools; contracting with businesses to provide school management services; procuring school supplies at a discount which was passed to the schools; temporarily storing those supplies; assisting in financial management and governmental filings; handling cash management; insurance and payroll functions. 412 N.J. Super. at 517-18. It also published a school directory which described the educational programs of the international schools, which in turn, was informative to parents and prospective faculty and students. Id. at 518. Also published was a newsletter so each school would be informed about other schools, their faculty (or needs for the same), which allowed parents and teachers to be informed of the type and quality of educational and extra-curricular programs. Id. at 519.

running such classes) is organized as a non-profit, and its organizational documents recite education or the intent to educate as a tax-exempt purpose (or as one of the several purposes), and that monies received by the entity will not be diverted to a private individual either during or at the end of the entity's life, analysis of any prong of the MMI exemption statute is unnecessary. However, the Legislature could not have envisaged or intended so cursory a review of an entity's eligibility for tax-exemption. While tax exemptions statutes should be narrowly but reasonably construed, effectuating legislative intent should not be lost in the process. Education in any discipline should not be considered in a vacuum for purposes of applying the MMI exemption.

In sum, PBS is using and operating the Subject in a commercially competitive manner, no different from any other commercially run for-profit non-academic learning/training/teaching school or center. Thus, its actual use of the Subject is not for the MMI of the general public.

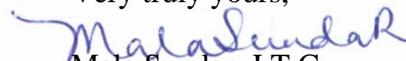
(3) Is PBS' Use and Operation of the Subject For-Profit?

Because the court finds that the actual use of the Subject as a dance school is not for the MMI of the general public, it does not need to analyze the third prong of whether or not there was a profit-making activity at the Subject. The court therefore makes no ruling in this regard.

CONCLUSION

For the foregoing reasons, the Township's motion for partial summary judgment is granted. The judgments of the County Board granting the Subject tax exemption are reversed.

Very truly yours,


Mala Sundar, J.T.C.