

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Donald A. and Barbara A. Fegert,

Petitioners,

v

MTT Docket No. 313942

Michigan Department of Treasury,

Tribunal Judge Presiding

Judith R. Trepeck

Respondent.

**ORDER DENYING PETITIONERS' MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(10)**

**ORDER GRANTING SUMMARY DISPOSITION TO RESPONDENT PURSUANT TO
MCR 2.116(C)(10) AND MCR 2.116(I)(2)**

In this case, Petitioners filed a motion for summary disposition under authority of MCR 2.116(C)(10), together with a brief in support, challenging Respondent's denial of Petitioners' claim for refund of Michigan income tax for tax years 1994-1997. Respondent filed a response to Petitioners' motion for summary disposition arguing that it did not err in denying Petitioners' Michigan income tax refund claim because Petitioners failed to timely file the claim within the applicable statute of limitations under MCL 205.27a(2), the general four year statute of limitations, or under the applicable tolling provision of MCL 205.27a(3). In the alternative, Respondent argues that Petitioners' August 12, 2001 federal income tax refund claim did not constitute "a period pending a final determination of tax," making MCL 205.27a(3) inapplicable.

APPLICABLE STANDARD

Under MCR 2.116(C)(10), a motion for summary disposition will be granted if the

documentary evidence demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455 (1999).

In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363 (1996), the Michigan Supreme Court set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

In reviewing a motion for summary disposition under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if affidavits or other documentary evidence show there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCarty v J Walter Thompson*, 437 Mich 109, 115 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237 (1992).

In the event, however, it is determined an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14 (1991).

Under MCR 2.116(I)(2), the Court may render a summary disposition judgment to the opposing party if it appears to the Court that that party is entitled to judgment rather than the moving party. The court in *Michigan Mutual Insurance Company v. Dowell, Dowell v. McKeever*, 204 Mich App 81 (1994), upheld the trial court's decision to grant summary disposition to the nonmoving party pursuant to MCR 2.116(I)(2).

PETITIONERS' CONTENTIONS

In its motion for summary disposition and brief in support, Petitioners argue that Respondent erroneously denied Petitioners' claim for refund of Michigan income tax for tax years 1994-1997. Petitioners argue that its March 20, 2003 Michigan income tax refund claim fell within the applicable statute of limitations under MCL 205.27a(2), or under the applicable tolling provision of MCL 205.27a(3).

RESPONDENT'S CONTENTIONS

In its response to Petitioners' motion for summary disposition, Respondent argues that it did not err in denying Petitioners' claim for refund of Michigan income tax for tax years 1994-1997. Respondent argues that Petitioners failed to timely file its Michigan income tax refund claim under MCL 205.27a(2), or under the applicable tolling provision of MCL 205.27a(3). In the alternative, Respondent argues that Petitioners' August 12, 2001 federal income tax refund

claim did not constitute a “period pending a final determination of tax,” making MCL 205.27a(3) inapplicable.

FINDINGS OF FACT

The operative facts necessary for the Tribunal to rule on this matter are not in dispute:

1. Petitioners timely filed their 1997 Michigan income tax return under an extension to file through October 15, 1998 with Respondent.
2. On August 12, 2001, Petitioners filed a federal income tax refund claim with the Internal Revenue Service (IRS) for tax years 1994 through 1997.
3. The IRS granted Petitioners’ federal income tax refund claim on October 8, 2001, 57 days after the claim was filed.
4. Petitioners’ filed a Michigan income tax refund claim on March 20, 2003 in the form of an amended Michigan income tax return with Respondent.
5. Respondent issued its Decision and Order of Determination on February 28, 2005 denying Petitioners’ Michigan income tax refund claim finding that it was untimely filed pursuant to MCL 205.27a(2).

CONCLUSIONS OF LAW

MCL 205.27a(2) states that:

The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return.

MCL 205.27a(3) provides for a tolling period, which states that:

The running of the statute of limitations is suspended for the following:

The period pending a final determination of tax, ... and for 1 year after that period.

MCL 205.27a(2) allows a taxpayer to request a Michigan tax refund within four years of the date the applicable tax return was due, or within one year following the final determination of tax, whichever is later.

The Tribunal determines that Petitioners' federal income tax refund claim constituted a "period pending a final determination of tax," and as a result, MCL 205.27a(3) is applicable. Petitioners' filed their refund claim in accordance with a United States Supreme Court opinion that allowed Petitioners to claim an additional basis in their stock sold in tax year 1997, allowing a greater deduction either in 1997 or 2001. *Gitlitz, et al v. Commissioner of Internal Revenue*, 531 US 206 (2001).

Petitioners' refund claim was necessarily subject to IRS examination. Specifically, the refund claim would be examined by an IRS auditor in order to make a *determination* of its validity and application as to the appropriate year. If the refund claim was determined to be valid and prior year returns were to be amended, any amendment to Petitioners' federal income tax return would have altered their adjusted gross income. This necessarily alters the Michigan income tax return for applicable periods.

In this case, the IRS determined that Petitioners were entitled to a federal income tax refund for tax years 1994-1997 as a result of losses carried back to these years. Since the IRS examined Petitioners' refund claim over a period of time and made a final determination of Petitioners' tax liability for tax years 1994-1997, MCL 205.27a(3) would apply and toll the four year statute of limitations for filing a Michigan income tax refund for the "period pending a final determination of tax" plus one year. The additional year would start from the IRS' October 8, 2001 date of determination. See *Polasky v Michigan Department of Treasury*, MTT Docket No. 275480 (2001).

Notwithstanding the tolling provision's applicability, Petitioners failed to timely file their Michigan income tax refund claim within the general four year statute of limitations under MCL 205.27a(2).

In this case, the four year statute of limitations for filing a Michigan tax refund claim began on October 15, 1998, the date Petitioners' 1997 Michigan income tax return was due based on a filed and granted extension by Respondent. Under MCL 205.27a(2), Petitioners had until October 15, 2002 to file a refund claim.

However, on August 12, 2001, Petitioners' filed a federal income tax refund claim with the IRS. As discussed above, MCL 205.27a(3) became applicable. The IRS granted Petitioners' federal income tax refund claim on October 8, 2001. Under MCL 205.27a(3), Petitioners had one year from October 8, 2001, or until October 8, 2002, in which to file their Michigan income tax refund claim with Respondent.

Again, MCL 205.27a(2) allows a taxpayer to request a Michigan tax refund within four years of the date the applicable tax return was due, or within one year following the final determination of tax, whichever is later.

Unfortunately, Petitioners filed their Michigan income tax refund claim in the form of an amended return on March 20, 2003, well after either the general four year statute of limitations under MCL 205.27a(2) or the tolling provision of MCL 205.27a(3).

The Tribunal has considered Petitioners' motion for summary disposition and Respondent's response under the criteria for MCR 2.116(C)(10), and based on the pleadings and other documentary evidence filed with the Tribunal, determines that there exists no genuine issue of material fact and that Respondent, pursuant to MCR 2.116(C)(10) and under the authority of MCR 2.116(I)(2), is entitled to judgment in its favor.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition is **DENIED**.

IT IS FURTHER ORDERED that Respondent, pursuant to MCR 2.116(C)(10) and MCR 2.116(I)(2), is **GRANTED** Summary Disposition and that Petitioners' Michigan income tax refund claim for tax years 1994-1997 is **DISMISSED**.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: April 17, 2006

By: Judith R. Trepeck
Tribunal Member