



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

April 12, 2021

MTT 2021-6

IMPORTANT REMINDER FOR ASSESSORS RECENT CASE LAW OF INTEREST

As a reminder, for 2020 cases scheduled for hearing after April 1, 2021, assessors should remember that the 2021 assessment/taxable values are needed for Small Claims appeals.

Recent Case Law of Interest

Detroit Diesel Corp v Redford Twp, unpublished per curiam opinion of the Court of Appeals, issued January 21, 2021 (Docket No. 350407).

Respondent appealed from the Tribunal's Final Opinion and Judgment, which determined the subject property's true cash value. The Tribunal concluded that the subject's highest and best use was industrial use, which included a variety of uses including its current use, single-user manufacturing. It also concluded that Respondent's comparable sale 1 was the best indicator of value. Respondent argued that the Tribunal erred when it concluded that the subject's highest and best use was industrial use. The Court explained that the Tribunal's conclusion was supported because the Tribunal's highest and best use encompassed single-user manufacturing, rejecting the argument that single-user manufacturing was the only highest and best use. At least one other published case upheld the Tribunal's determination that general industrial use was the highest and best use, not single-manufacturing use. The Court also explained that substantial evidence supported the Tribunal's conclusion because testimony indicated that there were limited restrictions in the subject's zoning, and that the subject had been leased for a variety of purposes. There was also substantial evidence that conversion to multi-tenant use was financially feasible, particularly Petitioner's evidence that other similar properties had been sold for conversion into multi-tenant use. In addition, evidence on the record indicated that the facility was not up to modern standards for single-user manufacturing. Respondent also argued that the Tribunal's conclusion of true cash value was not supported by the record, in part because the Tribunal relied on Petitioner's comparable sale 1. The Court explained that the Tribunal could rely on testimony that the sale was purchased for redevelopment regardless of a lease, the Tribunal rejected the size adjustment but did not find that it was dissimilar to the subject, and only accepted an adjustment for the roof replacement as deferred maintenance, not all the items argued by Respondent. In sum, the Tribunal conducted an extensive review of the evidence and made a determination of value. The Court affirmed.

DRSN Real Estate GP, LLC v City of Grosse Pointe Woods, unpublished per curiam opinion of the Court of Appeals, issued January 28, 2021 (Docket No. 352153).

Petitioner appealed the Tribunal's Final Opinion and Judgment determining the subject's true cash value (TCV) and taxable value (TV). Petitioner argued that the Tribunal increased the subject's TV in violation of MCL 211.27a. The Court explained that the result of the formula for TV under MCL 211.27a was less than the TV concluded by the Tribunal, and there was no evidence of additions on the record. Thus, the Tribunal erred when it arrived at a different value. Petitioner also argued that the Tribunal erred when it included indirect costs of obtaining financing in the cost approach. The Court explained that Petitioner incurred the costs to pursue bond financing because bank financing was unavailable. The costs were thus necessary and the Tribunal did not err by including them. Petitioner also argued that the Tribunal failed to account for an agreement that restricted the use of 16 independent living units for low-income tenants. The Court explained that Petitioner's expert exposed weaknesses in his own analysis, and thus the Tribunal's decision to rely on Respondent's expert's analysis was supported by evidence. Even assuming this agreement was a deed restriction, such an assumption does not overcome the weakness of Petitioner's expert. The Court agreed with Petitioner's contention that demolition costs should have been subtracted because the Tribunal relied on Respondent's expert's value for contractor's development costs that did not include demolition costs. Petitioner also argued that the Tribunal erred when it included the general contractor's profit. The Court disagreed, stating that the parties agreed that this profit should be included, and that the Tribunal could rely on the testimony of Respondent's expert that the number was a percentage of the contractor's costs. Petitioner argued that the subject had superadequacies that should not have increased the value. The Court explained that the Tribunal could rely on Respondent's evidence that the superadequacies were consistent with Petitioner's plan to build a luxury facility, and Petitioner introduced no evidence that the features were above market expectations. The Court rejected Petitioner's argument that the Tribunal failed to consider the other approaches to value because Petitioner's sales comparison approach was comprised of sales of going concerns, and the income approach consisted of properties outside of Michigan. Petitioner finally argued that the Tribunal erred by not considering the value of the subject as though it was vacant and available. The Court rejected this argument because the definition of true cash value did not include vacant and available, and the case cited by Petitioner distinguished between value of real estate and value of the going concern. The Court affirmed in part, reversed in part, and remanded.

West Mich Annual Conference of The United Methodist Church v City of Grand Rapids, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 352703).

Respondent appealed from an order granting summary disposition to Petitioner, and granting Petitioner an exemption under MCL 211.7s for a parsonage. Petitioner employed an ordained minister, who did not serve a specific congregation, but instead oversaw Petitioner's Midwest district. The minister gave at least one guest sermon to each church in the district each year, offered pastoral care to anyone with a physical or

mental ailment in the district, and also served as a chaplain if needed. The Court initially rejected Petitioner's contention that legislative acquiescence applied such that a case from 1915 could not be overruled, instead explaining that normal rules of statutory construction applied. Nonetheless, the 1915 case was still binding on the Court. In reviewing that case, the Court stated that the case did not hold that a parsonage must be the residence of a minister of a specific congregation. Court of Appeals cases held that a parsonage is the home of a minister and a minister is a person "ordained in that church," and the phrase "for a particular congregation" in caselaw refers to the requirement that the residence be used as a parsonage. The definition of parsonage is "a residence owned by a religious society, which is occupied by a minister ordained under the rules of that society." The minister in this case was fully ordained, the residence was owned by Petitioner, and that the minister used it as a parsonage. Given the plain language of the statute, no further construction is permitted, and the Court stated that it had no reason to resort to any other rules of statutory construction. The Court affirmed.

Transfer Tool Sys, Inc v Grand Haven Twp, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2021 (Docket No. 352505).

Petitioner appealed the Tribunal's order granting summary disposition to Respondent. According to Petitioner, it timely filed its personal property forms for the 2019 tax year after receiving the forms from the assessor. The forms included the form for claiming a Small Business Property Tax Exemption, which Petitioner filed. It did not learn that its Eligible Manufacturing Personal Property (EMPP) had been rejected until receiving a tax bill in July 2019. Subsequently, it filed an appeal with the Tribunal, which dismissed the appeal because Petitioner had not followed the requirements for claiming an EMPP. Petitioner then petitioned the December Board of Review, which concluded that it did not have jurisdiction to alter the subject's EMPP status. Petitioner filed a second appeal, which the Tribunal also dismissed. Petitioner argued that the assessor was required to provide notice that it denied the EMPP. The Court characterized this argument as Petitioner asserting the Respondent was required to notify Petitioner that it had filed the wrong form to request an EMPP exemption. The Court explained, however, that the statutes only require the assessor to notify a taxpayer when they file the form claiming the exemption. Because Petitioner did not file the proper form, the notice requirements were not triggered. Further, the information sent by the assessor explained how to file for an EMPP. Petitioner also argued that the filing of the incorrect forms was a qualified error that could be corrected by the December Board of Review. In rejecting this argument, the Court stated that the form that must be filed in order to claim the exemption is described by statute, there was no claim that the content of the form required correction, and the qualified error statute was amended to specifically exclude errors concerning the EMPP exemption. Petitioner also argued that the actions of Respondent and the Tribunal violated Petitioner's due-process rights. The Court stated that the forms sent to petitioner "contained a conspicuous notice" of the procedures for claiming the EMPP exemption. Both Respondent and the Tribunal followed the procedures established by statute. Thus, the deprivation of Petitioner's rights was because of its own failure. Finally, the Court

rejected Petitioner's assertion that the Tribunal should not have affirmed the Board of Review's findings. The Court stated that the Tribunal did not have subject-matter jurisdiction over the claim because the December Board of Review lacked authority. The Court affirmed.

Power Wellness Mgt, LLC v Chelsea Health & Wellness Foundation, unpublished per curiam opinion of the Court of Appeals, issued March 4, 2021 (Docket No. 352226).

Respondent appealed the Tribunal's order granting Petitioner summary disposition. The Tribunal ruled that the lessee-user tax under MCL 211.1818(1) did not apply to Petitioner, which operated a fitness center on tax-exempt property, and entered into a management agreement with the owner. Respondent asserted that the tax applied because the property was leased, loaned, or made available to Petitioner in connection with a for-profit business. The Court explained that the owner retained control of the operations of the fitness center, and Petitioner merely operated as the owner's agent. There was also no possibility for Petitioner to participate in revenue or profit sharing, and it had no autonomy over the center's operation. Respondent also argued that the management agreement was a lease. This issue, however, was waived because Respondent failed to raise it in its questions presented to the Court. Nonetheless, this issue failed because Respondent failed to present evidence of a lease and there was no evidence that any payments made to the property's owner. The Court affirmed.

City of Dexter v Power Wellness Mgt, LLC, unpublished per curiam opinion of the Court of Appeals, issued March 4, 2021 (Docket No. 349793).

Plaintiff appealed from the circuit court's order dismissing an appeal of a State Tax Commission (STC) order denying Plaintiff's request for a change of assessment. Plaintiff also appealed from the circuit court's order denying its appeal of a second STC order. Plaintiff argued that the circuit court erred when it determined that only the Tribunal had jurisdiction to determine whether Power Wellness Management was a lessee-user for prior tax years under MCL 211.181 and 211.154. As explained by the Court, the STC has four areas of subject matter jurisdiction, including property omitted or incorrectly reported under MCL 211.154. The Court further explained that property is not omitted if an assessor determines its value, which the assessor did. Instead, the issue was the applicability of MCL 211.181, and none of the STC's areas of subject-matter jurisdiction applied. Further, MCL 211.154 confers no authority on the STC to determine whether a property is subject to tax. The circuit court correctly determined it lacked jurisdiction, and the Court affirmed.

USA Hockey Foundation v Plymouth Twp, unpublished per curiam opinion of the Court of Appeals, issued March 18, 2021 (Docket No. 353171).

Petitioner appealed from the Tribunal's order granting Respondent summary disposition. Petitioner sought a charitable institution exemption, which Respondent denied. The subject was owned by Plymouth AC, LLC (Plymouth), and Petitioner was

Plymouth's sole member. Plymouth was a Colorado LLC, but Petitioner did not allege that Plymouth was a non-profit entity in the petition. In granting summary disposition to Respondent, the Tribunal concluded that Plymouth, a for-profit entity, did not both own and occupy the subject property, a requirement for an exemption under MCL

211.7o. Petitioner argued that Petitioner was entitled to an exemption as a nonprofit charitable institution because it was a wholly-owned subsidiary of Petitioner. However, the Court explained, this argument was rejected in a previous published decision, and the Tribunal correctly determined that Plymouth was not entitled to an exemption. Aside from the contention that the published case was incorrectly decided, Petitioner offered no reason that it was not precedentially binding. And although the Supreme Court initially scheduled that case for oral argument prior to a settlement, it never expressed disagreement of the analysis of the Court of Appeals. Petitioner also argued that it owned the property because it was the sole member of Plymouth. According to the Court, no caselaw established that a subsidiary is entitled to an exemption when its parent is tax-exempt. Lastly, Petitioner argued that the Tribunal erred when it determined that Plymouth was a for-profit entity. The Court explained that this argument was meritless because Petitioner cited no authority for it. The Court affirmed.

Falk v Meridian Twp, unpublished per curiam opinion of the Court of Appeals, issued March 18, 2021 (Docket No. 353741).

Petitioner appealed the Tribunal's Final Opinion and Judgment concerning the subject's 2019 taxable value. Respondent added omitted property to the subject's assessment for the 2019 tax year. The Tribunal concluded that Respondent had failed to establish that the additions had actually been omitted by producing the 2018 record card. Petitioner argued that, despite this conclusion, Respondent was required to seek approval from the State Tax Commission to add omitted property. The Court explained that this issue was moot because the Tribunal had already concluded that the addition of the omitted property was improper. Further, the Court would not render a decision on a hypothetical situation, and Petitioner sought a ruling to prevent a "speculative anticipated future injury." Petitioner also argued that the 2019 taxable value must be reduced to account for property the assessor determined was no longer present as losses. The Court explained that Petitioner's argument was "completely untethered" to statute. Petitioner failed to explain how he determined his value for losses and he thus abandoned his argument on appeal. The Court affirmed.

Salvation Army v Addison Twp, unpublished per curiam opinion of the Court of Appeals, issued March 25, 2021 (Docket No. 353210).

Respondent appealed from the Tribunal's Final Opinion and Judgment that concluded that Petitioner was entitled to an exemption under MCL 211.7o. Petitioner operated Echo Grove Camp and Retreat Center, a Christian education camp. Petitioner employed a camp director, facilities manager, program director, and activities director, all of whom lived at properties at Echo Grove. Three of these residential parcels were at issue in the appeal. Respondent challenged whether the properties were occupied solely for the purposes for which Petitioner was incorporated. After reviewing caselaw,

the Court stated that the controlling factor is not whether the property is used for residential purposes, but “whether such residential use is necessary to further the purposes for which the charitable institution was incorporated.” The Court explained that the Tribunal did not misapply the law or adopt a wrong principle when it concluded that it was necessary for Echo Grove’s operation to house certain employees near the camp. Although Petitioner’s articles of incorporation did not specifically identify operation of the camp as its charitable object, operation of the camp fit into Petitioner’s charitable purposes. With respect to the camp director and facilities manager’s residences, evidence supported the Tribunal’s conclusion that the occupancy of these parcels was necessary for the camp’s operation because these employees were required to be in close proximity to the camp, and the use was necessary to further petitioner’s mission of providing Christian education. Respondent argued that providing housing for these employees was no more than a wage benefit, but the Court explained that the benefit was incidental to the use, which was necessary to further Petitioner’s purposes. The Court also rejected Respondent’s argument that Petitioner could obtain an unlimited number of properties in the township and seek exemptions for them. However, the Court noted, Petitioner would still be constrained by the requirements of the exemption. With respect to the pastoral retreat house, the Court concluded that the Tribunal erred in granting it an exemption because the case concerned the 2018 tax year, and the program director did not begin occupying the property until 2020. The Court affirmed in part, vacated in part, and remanded for consideration of the use of the pastoral retreat house.

Stirling v Leelanau Co, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 353117).

Respondent appealed from the Tribunal’s order granting Petitioner summary disposition. Petitioner claimed a Principal Residence Exemption (PRE) for his Leelanau County home, and his wife claimed an exemption for a residence in Utah. The Tribunal concluded that the exemptions were not substantially similar, such that Petitioner was not disqualified from receiving a PRE. Although there were some differences between the Michigan and Utah statutes, the statutes only need to be “substantially similar,” not identical. Further, the main function of both statutes is to grant an exemption to a property used as a primary residence. The Court rejected Petitioner’s argument that the Utah exemption is different because Petitioner placed too much emphasis on one difference in the statute. The Court reversed and remanded.

I trust that this newsletter was of interest to you. On a personal note, my best wishes as we start to experience Spring-like weather; my best wishes to you and your families.

Sincerely,



Steven M. Bieda
Michigan Tax Tribunal