Ross Education LLC,
Petitioner,

v

Clinton Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 17-000972

Presiding Judge
Steven M. Bieda

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING PETITIONER SUMMARY DISPOSITION UNDER MCR 2.116(I)(2)

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment (POJ) on November 25, 2020. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

Neither party has filed exceptions to the POJ.

The Administrative Law Judge (ALJ) considered the testimony and evidence submitted and made specific findings of fact and conclusions of law. The ALJ's determination that retroactive application of *SBC Health* is appropriate is supported by the evidence and applicable statutory and case law.

Given the above, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[1] The Tribunal also incorporates by reference the Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

IT IS ORDERED that Respondent's Request for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Petitioner is GRANTED Summary Disposition under MCR 2.116(I)(2).

IT IS FURTHER ORDERED that Parcel No. 16-11-48-207-785 is EXEMPT from ad valorem taxation under MCL 211.9(a)(1) for the 2017 tax year.

[1] See MCL 205.726.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision.[2] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[3] You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[4] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[5]

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[6] You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal.[7] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[8]

By _____

Entered: January 15, 2021
ssm

[2] See TTR 261 and 257.
[3] See TTR 217 and 267.
[4] See TTR 261 and 225.
[5] See TTR 261 and 257.
[6] See MCL 205.753 and MCR 7.204.
[7] See TTR 213.
[8] See TTR 217 and 267.

Ross Education, LLC,
Petitioner,

v

Clinton Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 17-000972

Presiding Judge
Peter M. Kopke

PROPOSED ORDER DENYING
RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

PROPOSED ORDER GRANTING
PETITIONER SUMMARY DISPOSITION UNDER MCR 2.116(I)(2)

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

On June 6, 2018, Respondent filed a Motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. In support of its Motion, Respondent contends that *SBC Health Midwest, Inc v City of Kentwood* should only be given prospective effect and not apply to a 2017 exemption because on tax day the law was that the subject did not qualify for an exemption.[1] Respondent also contends that (i) the law was, prior to the *SBC Health* decision, that Petitioner would not have qualified for an exemption under MCL 211.9(1)(a), (ii) allowing retroactive application would open the floodgates for claims by Petitioner and other similar entities, (iii) the purpose of the new rule changes the interpretation of MCL 211.9(1)(a) and allows for-profit institutions to qualify, (iv) Petitioner and Respondent relied on the old rule that non-profit status was

[1] See *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65; 894 NW2d 535 (2017).

a requirement for the exemption, and (v) the *SBC Health* decision has had an impact on the administration of justice and, if given retroactive effect, may result in the refund of millions of tax dollars.

On June 29, 2018, Petitioner filed a response to the Motion. In its Response, Petitioner contends that (i) the *SBC Health* decision is not new law, (ii) the exemption arises from an unambiguous statute and not common law, (iii) *SBC Health* was issued before Petitioner timely filed its appeal for the 2017 tax year, (iv) it is well established that judicial decisions are given full retroactive effect, (v) the Michigan Supreme Court did not hold that *SBC Health* must only be applied prospectively, (vi) the Supreme Court did not override clear caselaw or create new law, (vii) retroactive effect is also mandated by Michigan law, (viii) Respondent provides no support for the allegation that it relied on an old rule based on a misinterpretation of MCL 211.9(1)(a), (ix) justice would not be served if the Tribunal does not adhere to *SBC Health* because an honorable government should not keep taxes that it is not entitled to, and (x) the Tribunal should grant Petitioner summary disposition under MCR 2.116(I)(1).

On August 15, 2018, the Tribunal issued an Order holding the case in abeyance pending resolution of *Ross Education LLC v City of Taylor*. The Court of Appeals issued its decision in that case on August 13, 2019, and the Supreme Court denied leave to appeal on June 30, 2020.[2] A status conference was conducted on July 27, 2020 and the case was removed the case from abeyance by Order on July 29, 2020, after the parties

[2] See the unpublished opinion *per curiam* issued by the Court of Appeal in *Ross Education LLC v City of Taylor* on August 13, 2019 (Docket No. 344516) *appeal denied*, ___ Mich ___; 944 NW2d 686 (2020).

indicated during the status conference that Respondent's June 6, 2018 Motion for Summary Disposition was ripe for consideration.

The Tribunal has reviewed the Motion, the Response, and the pleadings and evidence submitted and finds that the denying of Respondent's Motion and the granting of summary disposition for Petitioner under MCR 2.116(I)(2) is warranted at this time.

STANDARD OF REVIEW

There are no specific Tribunal rules governing motions for summary disposition. Thus, the Tribunal is bound to follow the Michigan Rules of Court in rendering decisions on such motions.[3] In this case, Respondent moves for summary disposition under MCR 2. 116(C)(8) and MCR 2.116(C)(10).

A. *Motions for Summary Disposition under MCR 2.116(C)(8)*.

MCR 2.116(C)(8) provides for summary disposition when "the opposing party has failed to state a claim on which relief can be granted."[4] A motion under this rule "tests the legal sufficiency of the complaint" and "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant."[5] Such motions "may be granted **only** where the claims alleged are 'so **clearly unenforceable as a matter of law** that **no** factual development could possibly justify recovery.'"[6] [Emphasis added.] Further, "when deciding a motion brought under this section, a court considers **only** the pleadings."[7] [Emphasis added.]

B. *Motions for Summary Disposition under MCR 2.116(C)(10)*.

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[3] See TTR 215.
[4] See *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).
[5] *Id*. (citations omitted).
[6] *Id*. (citations omitted).
[7] *Id*. (citations omitted).

With respect to summary disposition under MCR 2.116(C)(10), such motions test the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (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**.[8] Further, it has also been held that (i) a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party,[9] (ii) the moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider and,[10] (iii) the burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists, (iv) where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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,[11] and (v) if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[12]

C. *Summary Disposition under MCR 2.116(I)(2)*.

[8] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). See also *Maiden*, *supra* at 120.
[9] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[10] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[11] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[12] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

MCR 2.116(I)(2) provides for summary disposition "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."[13]

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion under MCR 2.116 (C)(8) and (10) and finds that denying the Motion is warranted, as the *SBC Health* decision is entitled to "full retroactive effect." More specifically, the decision was rendered by the Michigan Supreme Court and Supreme Court decisions are generally "given full retroactive effect" unless the decision "overrules settled precedent" or "if injustice would result from full retroactivity."[14] In determining whether the *SBC Health* decision should be applied retroactively, the Tribunal "must first answer the threshold question whether the decision clearly established a new principle of law" and, if the decision established a new principle or rule of law, "three factors must be weighed in determining [whether the] decision should not have retroactive application. Those factors are: (1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect of retroactivity on the administration of justice."[15]

In that regard, the Tribunal had held, prior to the *SBC Health* decision, that nonprofit status was a requirement for a personal property exemption under MCL 211.9(1)(a).[16] The Supreme Court did, however, establish in *SBC Health* that for-profit entities could also qualify for the exemption.[17] Accordingly, the Tribunal concludes that

[13] See also *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).
[14] See *Bezeau v Palace Sports & Entertainment, Inc*, 487 Mich 455, 462; 795 NW2d 797 (2010).
[15] *Id*. at 462-463 (citation omitted).
[16] See *SBC Health*, *supra* at 69.
[17] See *SBC Health*, *supra* at 78.

the Supreme Court in *SBC Health* established a new rule of law, as the Supreme Court's interpretation of the underlying statute "affected how the [underlying] statute would be applied to parties . . . in a way that was inconsistent with how the statute had been previously applied."[18] As such, the Tribunal is required to consider and weigh the three factors noted above.

With respect to the first factor, the Tribunal's prior interpretation of MCL 211.9(1)(a) read language into that statutory provision that was not present, which resulted in limiting the application of that statute to non-profit entities only. The new rule corrected that interpretation, as courts "do not read requirements into a statute where none appear in the plain language and the statute is unambiguous."[19] Thus, the purpose of the new rule was to provide a correct interpretation of MCL 211.9(1)(a).

As for the second factor, there is little evidence concerning reliance on the old interpretation, but it would be reasonable to infer that local units of government and for-profit educational institutions relied on previous Tribunal decisions limiting the application of MCL 211.9(1)(a) to non-profit educational institutions only. As such, the Tribunal concludes that there was likely substantial reliance on the old rule.

With respect to the effect of retroactivity, the *Ross Education* decision considered whether the petitioner could claim a tax refund for prior tax years under MCL 211.53a. The Court held that the mistake was not one of fact, but one of law because the petitioner misunderstood the property's "legal status."[20] The mistake was also not mutual because the assessor did not adopt the mistake belief of the petitioner.[21] The

[18] See *Bezeau*, *supra* at 463.
[19] See *SBC Health*, *supra* at 72.
[20] See *Ross Ed*, *unpub op* at 5.
[21] *Id*.

Court held that the petitioner was not entitled to relief under MCL 211.53a.[22] Because taxpayers may not utilize MCL 211.53a to recoup taxes paid in prior years, the Tribunal concludes that applying *SBC Health* retroactively would have little effect on the administration of justice (i.e., the opening of floodgates) and not require the refund of millions of tax dollars because retroactivity would apply to small number of cases (i.e., the instant case and MOAHR Docket No. 17-000936), as 2017 claims that were not timely filed and claims for 2016 and earlier tax years are precluded under *Ross Education*.

Given the above, the Tribunal concludes, based on its consideration and weighing of the factors, that retroactive application of *SBC Health* is appropriate given the purpose of the new rule and the limited retroactive application of that new rule. Accordingly, the Tribunal denies Respondent's Motion for summary disposition based on the retroactive application of the *SBC Health* decision or, more specifically, the application of the corrected interpretation of MCL 211.9(1)(a). The Tribunal also grants summary disposition in favor of Petitioner under MCR 2.116(I)(2) based on the parties agreement that Petitioner "is a for profit educational institution and therefore its personal property is exempt from taxation under the General Property Tax Act pursuant to MCL 211.9(1)(a)."[23]

PROPOSED JUDGMENT

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

IT IS FURTHER ORDERED that Petitioner is GRANTED summary disposition under MCR 2.116(I)(2).

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[22] See also unpublished opinion *per curiam* opinion issued by the Court of Appeals in *Dorsey Sch of Business, Inc v Charter Twp of Saginaw* on March 19, 2019 (Docket No. 344414).
[23] See the parties' June 6, 2018 Joint Stipulation of Facts, ¶ 2, p 2.

IT IS FURTHER ORDERED that Parcel No. 06-06-13-51133-1 is EXEMPT from ad valorem taxation under MCL 211.9(a)(1) for the 2017 tax year.

EXCEPTIONS

This is a **proposed** decision ("POJ") prepared by the Michigan Administrative Hearings System and **not** a final decision.[24] As such, **no** action should be taken based on this decision, as the parties have 20 days from date of entry of this POJ to **notify** the Tribunal **in writing if they do not agree with the POJ and** to **state in writing** why they do not agree with the POJ (i.e., exceptions).

Exceptions are **limited** to the evidence submitted and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[25]

Exceptions and responses filed by **e-mail or facsimile** will **not** be considered in the rendering of the Final Opinion and Judgment. A copy of a party's written exceptions or response **must** be sent to the opposing party **by mail or email, if** email service is agreed upon by the parties**,** and proof must be submitted to the Tribunal demonstrating that the exceptions or response were served on the opposing party.

After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
3. Issue an Order vacating the POJ and ordering such other action as is necessary and appropriate.

Entered: November 25, 2020 By Peter M. Koglin

WMM/pmk

[24] See MCL 205.726.
[25] See MCL 205.762(2) and TTR 289(1) and (2).