

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

Harry Fox, Inc.,
Petitioner,

v

MTT Docket No. 312515

City of Roseville,
Respondent.

Tribunal Judge Presiding
Judith R. Trepeck

ORDER GRANTING SUMMARY DISPOSITION FOR PETITIONER

On December 27, 2004, Petitioner filed a petition in the above-captioned appeal contending that a portion of the subject property is exempt from personal property taxation pursuant to MCL 211.9(q) and MCL 257.801(D) because it is equipment used exclusively for tree harvesting.¹

On February 2, 2005, Respondent filed an answer to Petitioner's petition arguing that subject property was not exempt from taxation, leaving Petitioner to its proofs.

Respondent's November 3, 2005 Prehearing Statement indicates Respondent's contention that neither MCL 211.9(q) nor MCL 257.801(D) exempts personal property used to clear trees and stumps from real property that is being cleared for the purpose of commercial or residential development. Respondent avers that equipment used to clear land for commercial or residential development does not qualify as "wood harvesting equipment" under MCL 211.9(q) or MCL 257.801(D) because such a use does not constitute commercial foresting.²

On September 13, 2006, a prehearing conference was held in the above-captioned matter. At this conference it was determined that the legal issue to be litigated was whether the subject equipment was exempt from personal property tax pursuant to MCL 211.9(q) or MCL

¹ Petitioner's Petition, p 2.

² Respondent's Prehearing Statement, p 2.

257.801(D).³ It was also determined that this issue would be decided based upon briefs submitted by the parties.⁴

On November 8, 2006, Petitioner submitted Petitioner's Brief in Support of Exemption for Petitioner ("Petitioner's Brief") in which it contends that parcel 530-28150-00 is exempt from taxation pursuant to MCL 211.9(q) because the equipment is used exclusively for tree harvesting.⁵ In support of this contention, Petitioner essentially argues that as long as the equipment is exclusively used to cut and chip trees, the purpose for cutting and chipping the trees is irrelevant. Petitioner further argues that the MCL 211.9(q) definition of wood harvesting is unambiguous and equipment satisfying the definition shall be exempt.

On November 10, 2006, Respondent filed Respondent's Brief of Findings of Fact and Conclusions of Law ("Respondent's Brief"). Respondent contends that the definition of wood harvesting contained in MCL 211.9(q) refers to equipment used exclusively in activities directly related to forest management or logging and because the subject equipment is used to cut and chip trees from property in order to facilitate its commercial or private development, the equipment should not be exempt from personal property taxation. In support of this contention, Respondent essentially argues that a proper interpretation of MCL 211.9(q) does not exempt the equipment at issue from taxation.

On November 13, 2006, Petitioner filed a Reply Brief in which it argues that MCL 211.9(q) does not comport with Respondent's argument. Petitioner effectively argues that the location of the harvest area and its subsequent use post-harvest are irrelevant.

FINDINGS OF FACT

Petitioner and Respondent agree upon the salient facts in the above-captioned appeal. Petitioner's business is to clear land for public and private development as indicated by the

³ September 15, 2006 Summary of Prehearing Conference and Scheduling Order, pp 3-4.

⁴ September 15, 2006 Summary of Prehearing Conference and Scheduling Order, p 5.

⁵ Petitioner's Brief, p 1.

evidence submitted by Respondent.⁶ The equipment at issue is used exclusively to cut down trees, remove stumps, chip wood, and load the wood chips onto trucks for removal. Petitioner then sells the wood chips for fuel.

CONCLUSIONS OF LAW

A. Motions for Summary Disposition

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; 597 NW2d 28, 33 (1999). In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314, 317 (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).

While the parties have not titled their motions as motions for summary disposition, this is essentially the relief requested by the parties and the Tribunal shall decide the matter accordingly. The parties have stipulated to the material facts and the evidence presented demonstrates that there is no genuine issue of material fact. As a result, summary disposition is proper.

B. Exemption from Taxation for Personal Property Used in “Wood Harvesting” Operations – MCL 211.9(q)

Michigan’s General Property Tax Act (“the Act”), MCL 211.1, *et seq.*, provides for the annual assessment and taxation of all real and personal property within the state unless expressly exempted. The Act indicates the taxable status of real property is determined pursuant to MCL

⁶ Respondent’s Brief, Exhibit 1.

211.2(2), which provides that “[t]he taxable status of real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.”

Therefore, the taxable status of real property is determined on the December 31st before the tax year. Each tax year stands alone. The taxable status of the property for previous years is not controlling.

The Act provides an exemption from personal property taxation for equipment used exclusively in wood harvesting operations in MCL 211.9(q). “In Michigan, exemptions from taxation are to be strictly construed in favor of the taxing unit.” *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 298 NW2d 422 (1980). Petitioner bears the burden of establishing beyond a reasonable doubt that the class of exemption claimed was intended by the Legislature if the class has not already been established by statute or through case law. *Detroit v Detroit Commercial College*, 322 Mich 142, 148-149, 33 NW2d 737, 739 (1948). “[Petitioner’s] burden of proof in establishing that it was within an already established class of property entitled to charitable use exemption from property tax [is] proof by a preponderance of [the] evidence, rather than proof beyond a reasonable doubt.” *Holland Home v City of Grand Rapids*, 219 Mich App 384, 557 NW2d 118 (1996). Therefore, it is Petitioner’s burden to establish that it is more likely than not that the facts and evidence support its position that the requirements for an exemption have been met. Michigan’s Supreme Court has indicated that the reason for this heightened burden is because “[exemption] from taxation effects the unequal removal of the burden generally placed on all landowners to share in the support of local government [and] [s]ince exemption is the antithesis of tax equality, exemption statutes are to be strictly construed in favor of the taxing unit.” *Ladies Literary Club, supra*, 409 Mich at 753.

The sole issue in the above-captioned appeal pertains to the interpretation of MCL 211.9(q). For the tax years at issue, 2000, 2001 and 2002, MCL 211.9(q)⁷ indicates the following personal property is exempt from taxation:

All equipment used exclusively in wood harvesting, but not including portable or stationary sawmills or other equipment used in secondary processing operations. As used in this subdivision, "wood harvesting" means the clearing of land for forest management purposes, the planting of trees, and all forms of cutting or chipping of trees and the loading of them on trucks for removal from the harvest area.

Respondent argues that general language used in MCL 211.9(q) indicates that the Legislature intended only to exempt equipment used exclusively for forest management purposes.

Respondent argues that:

- 1) The equipment must be used exclusively for forest management and/or logging purposes in order to qualify for an exemption.
- 2) The harvest area from which the chipped or cut trees are being hauled must be forests and/or lands used by the logging industry.

Respondent argues that equipment used to clear land for private or commercial development does not qualify because such development is not a forest management purpose. Respondent states that "[t]he wording 'all forms of cutting and chipping of trees' is not independent from the legislative intent of forest management or activities dealing with the harvesting of wood."⁸

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature in enacting a provision. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212, 501 NW2d 76 (1993). Statutory language should be construed reasonably, keeping in mind the purpose of the statute. If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. *Barr v Mount*

⁷ This statute was amended by PA 2003, No 140 and subsection (q) currently reads as follows (alterations included):

All equipment used exclusively in wood harvesting, but not including portable or stationary sawmills or other equipment used in secondary processing operations. As used in this subdivision, "wood harvesting" means ~~the~~ clearing ~~of~~ land for forest management purposes, ~~the~~ planting ~~of~~ trees, ~~and~~ all forms of cutting or chipping of trees, and ~~the~~ loading ~~of them~~ trees on trucks for removal from the harvest area.

⁸ Respondent's Brief, p 3.

Brighton Inc, 215 Mich App 512, 516-517, 546 NW2d 273 (1996). However, if reasonable minds can differ regarding the meaning of a statute, judicial construction is appropriate. *Yaldo v North Pointe Ins Co*, 217 Mich App 617, 620-621, 552 NW2d 657 (1996). While tax exemption statutes must be strictly construed in favor of the taxing authority, this rule does not permit a strained construction adverse to the Legislature's intent. *Holland Home, supra*.

The problem with Respondent's argument is that the prepositional phrase "for forest management purposes" clearly modifies "the clearing of land" and none of the other exempt wood harvesting activities. As a result, "wood harvesting" constitutes *any* of the following activities:

- 1) clearing land for forest management purposes,
- 2) planting trees,
- 3) all forms of
 - a. cutting or chipping trees and
 - b. loading trees on trucks for removal from the harvest area.

Additionally, the equipment cannot be a sawmill and cannot be used in secondary processing operations in order to qualify for the exemption.

It is clear that if the phrase "all forms of cutting or chipping trees" was not present in the statute, Petitioner would not qualify for the exemption because it does not "clear land for forest management purposes," it clears land for commercial development. Respondent believes the phrase "all forms of cutting or chipping of trees and the loading of them on trucks for removal from the harvest area" requires an interpretation that only equipment used to cut and chip trees from a "harvest area" is exempt. Respondent argues that because the land from which the trees are cut by Petitioner is used for private and commercial development, it is not a "harvest area." "Harvest area" is not defined in 211.9(q) and Respondent avers that the only logical interpretation of "harvest area" is "forests and/or lands used by the logging industry, not land being cleared for residential or commercial development."⁹

⁹ Respondent's Brief, p 5.

Webster's defines harvest as "the act or process of gathering in a crop." *Webster's Dictionary*, (8th ed). It is reasonable to conclude that any area where the crop is gathered is a "harvest area." If it weren't a harvest area, there wouldn't be any crops, i.e., trees. The subsequent use of the area post-harvest is irrelevant. There is no indication that the Legislature intended only equipment used on continuously harvested land to be exempt.

Respondent's argument that the equipment must be used for forest management purposes and/or logging is not supported by a plain reading of the statute. If the Legislature intended to exempt only equipment used for such purposes, it would have done so expressly and not through implication. It should be noted that the parties agree that Petitioner uses the equipment at issue in its business of clearing land for residential and commercial development, which is confirmed by the evidence submitted by Respondent.¹⁰ If the equipment were used in other non-exempt operations, such as the demolition of buildings, it would not be exempt. Because the parties have stipulated to the actual use of the equipment, Petitioner has met its burden of showing that the exemption requirements have been met. As a result, the Tribunal concludes that the equipment at issue is used exclusively to cut and chip trees and load them onto trucks for removal from the harvest area and is exempt from personal property taxation pursuant to MCL 211.9(q). Therefore,

JUDGMENT

IT IS ORDERED that Summary Disposition **IS GRANTED** in favor of Petitioner for years 2000, 2001 and 2002.

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

MICHIGAN TAX TRIBUNAL

Entered: February 23, 2007

By: Judith R. Trepeck, Tribunal Member

¹⁰ Respondent's Brief, Exhibit 1.