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

Hospital Purchasing Service of Michigan,
Petitioner,

v MTT Docket No. 339542

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Cynthia J Knoll

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

SUMMARY

Petitioner, Hospital Purchasing Service of Michigan, is appealing Bill for Taxes Due (Final Assessment N261083), issued by Respondent, Michigan Department of Treasury, for use tax in the amount of $32,204.00 tax, $3,220.00 penalty, and $9,376.61 interest[1] for tax periods August 1, 2001 through June 30, 2004. Respondent denied Petitioner's claim that it is exempt from use tax as a nonprofit charitable organization finding it was never entitled to an exemption because it is not exempt from tax under the Internal Revenue Code. Petitioner contends that it is exempt from use tax because it is in possession of a Use Tax exemption letter issued by Respondent on January 6, 1993, with no expiration date given. The Tribunal disagrees, finding that Petitioner fails to meet the requirements for exemption under the statute. Respondent's assessment is affirmed.

INTRODUCTION

Petitioner is a Michigan corporation, organized on a non-stock, membership basis and its members are made up of nonprofit organizations. It is engaged in the business of purchasing supplies in large quantities to enable its members to save money by reducing their costs through the "power of purchase." Petitioner also allows non-members, who are for profit, to participate in its purchasing program. Although Petitioner is registered with the Michigan Department of Energy, Labor & Economic Growth as a Domestic Nonprofit Corporation, it is not exempt from federal income tax under the Internal Revenue Code ("IRC") pursuant to section 501(c)(3) or 501(c)(4). On January 6, 1993, Petitioner was issued an exemption certificate by Respondent, exempting it from sales and use tax. For an unexplained reason, Respondent did not reissue an exemption letter after June 13, 1994, as prescribed under MCL 205.94(1)(w).

[1] Interest continues to accrue per statute.

Respondent audited Petitioner for Use Tax and issued the Final Assessment on June 28, 2007. Petitioner filed this appeal on July 31, 2007. A Prehearing conference was held at the Tribunal on September 9, 2010, and a subsequent conference call took place on September 30, 2010, to discuss the status of a different but relevant case recently decided by the Court of Appeals. The parties stated their intent at that time to file cross motions for summary disposition and a joint stipulation of facts was filed on December 2, 2010.

On December 9, 2010, Respondent filed its Motion for Summary Disposition, in accordance with the Tribunal's Scheduling Order entered October 19, 2010. Petitioner did not file a Motion for Summary Disposition nor did Petitioner file a response by December 30, 2010, as required by the Scheduling Order.

STIPULATED FINDINGS OF FACT

The parties stipulated to the following findings of fact and the Tribunal finds:

1. This case involves Final Assessment N261083 for Use Tax for tax periods August 1, 2001 through June 30, 2004.
2. Final Assessment N261083 was issued on June 28, 2007, in the amount of $32,204.00 tax, $3,220.00 penalty, $9,376.61 interest. Interest continues to accrue per statute.
3. The final assessment was issued as a result of an audit conducted by the Department for tax periods August 1, 2001 through June 30, 2004.
4. The Petitioner's headquarters are located in Middleville, Michigan.
5. The Petitioner is organized as a Michigan corporation.
6. Petitioner is registered with the Department of Energy, Labor & Economic Growth ("DELEG") as a Domestic Nonprofit Corporation.
7. According to its Articles of Incorporation, as amended, on file with the DELEG, Petitioner is organized on a non-stock member membership basis.
8. According to its Articles of Incorporation, as amended, on file with DELEG, membership in Petitioner is limited to nonprofit health organizations interested in the objects of the corporation and which are exempt from taxation in accordance with the provisions of section 501(c)(3) of the Internal Revenue Code.
9. Petitioner has Non-Member Participant entities involved that are not tax exempt.
10. Petitioner is not exempt from federal income tax under Internal Revenue Code § 501(c)(3) or 501(c)(4).
11. Petitioner derives at least a portion of its revenue from for-profit activities with its Non-Member Participants.

PETITIONER'S CONTENTIONS

Petitioner contends that none of the tax, penalties, or interest in the Final Assessment are correct. It asserts that it is a Michigan non-profit corporation and has a charitable purpose. Petitioner asserts that it is in possession of a Use Tax exemption letter dated January 6, 1993, with no expiration date given. It argues that since the time Petitioner was delivered the 1993 exemption letter, it has maintained its operations as a Michigan non-profit corporation with a charitable purpose.

Petitioner relies on MCL 205.94(1)(w) stating "if a nonprofit charitable organization had a Use Tax exemption certificate before June 13, 1994, '[t]he department shall reissue an exemption letter after June 13, 1994 to each of those organizations that had an exemption letter. . . .'"[2] It further cites Revenue Administrative Bulletin 2002-15 ("RAB") which "discusses Use Tax exemption procedures for the period of time covered by the Use Tax assessment and states that non-profit organizations such as [Petitioner] must have an exemption letter re-issued after June 12, 1994." *Id.* Petitioner contends that:

> [It] should have received a reissued exemption letter, but because a division of the Department of Treasury did not reissue . . . [Petitioner an] exemption letter, as required by statute, there was no possible way for [Petitioner] to comply with the requirements of RAB 2002-15. As such, [Petitioner] should still be considered exempt from Use Tax, based on the exemption letter that it received previously and should be reissued a letter stating its exemption from the Use Tax.[3]

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner is not entitled to an exemption from use tax. It argues that Petitioner was never entitled to an exemption because it is admittedly not exempt from tax under the IRC and should not have received an exemption letter from the Department of Revenue in 1993. Respondent maintains that Petitioner's claim that "because it was issued an exemption letter in 1993. . . the Department was **required** to re-issue an exemption letter after June 13, 1994" [emphasis in original][4] is misleading. Respondent notes that the statute "specifically states that the Department will reissue the exemption letter if the organization **still meets the requirements** that originally entitled the organization to the exemption." *Id.* Respondent contends that since Petitioner never met the requirements to begin with, it was not required to re-issue the exemption letter.

In response to Petitioner's argument that the exemption letter issued in 1993 had no expiration date, Respondent points out that the letter states "if the Internal Revenue Service ('IRS') revokes the organizations [sic] exempt status, if a Treasury audit discovers non-exempt status, or if for any other reason the organization no longer qualifies for exemption, then the organization is

[2] Petitioner's Petition, p. 2.
[3] Petitioner's Petition, p. 2.
[4] Respondent's Brief in Support of Motion for Summary Disposition, p. 6.

subject immediately to sales or use tax on its purchases."[5] Respondent contends that Petitioner failed to meet the requirements when it applied for the exemption letter and therefore it was issued in error. It argues "Petitioner should not be rewarded for failure to inform the Department that the IRS had not granted them exempt status under the IRC. Forcing the Department to reissue an exemption letter that was issued based upon erroneous information provided by Petitioner would do just that."[6]

Respondent further contends that Petitioner offered no records as required by RAB 2002-15, to show that its purchases were exempt from sales or use tax. "Petitioner has not provided records of each purchase and has not provided exemption certificates for these purchases."[7] Respondent further argues that even if Petitioner could offer the records, "presumably . . . at least a portion of these purchases would be subject to sales or use tax because the Petitioner allows for profit entities to participate in the purchasing program." *Id.* In that case, the burden would be on Petitioner to demonstrate what percentage of sales was made to nonprofit versus for-profit entities.

Finally, Respondent contends that Petitioner is not entitled to waiver of penalty. Petitioner has the burden of establishing by clear and convincing evidence that its failure to file and pay tax was due to reasonable cause and not to willful neglect. Respondent asserts that Petitioner's burden has not been satisfied because the facts in this case do not establish reasonable cause. Respondent stated:

> Petitioner knew that it was not exempt from federal tax and failed to inform the Department of this fact. It continued to rely on an exemption letter that they knew was, at best, no longer valid because it was issued before June 13, 1994 and at worst, not valid at issuance. . . . Additionally, Petitioner was or should have been aware of its nonexempt status by the language contained in the letter regarding an organizations [sic] continued exempt status. Therefore, Petitioner is not entitled to waiver of penalty.[8]

APPLICABLE LAW

Respondent moves for summary disposition pursuant to MCR 2.116(C)(8). "A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery." *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). "Under MCR 2.116(C)(8), we accept all well-pleaded factual allegations as true and construe them in a light most favorable to the nonmoving party." *Johnson v City of Detroit*, 457 Mich 695, 701; 579 NW2d 895 (1998). Only if no factual development

[5] Respondent's Brief in Support of Motion for Summary Disposition, p. 7.
[6] Respondent's Brief in Support of Motion for Summary Disposition, p. 7.
[7] Respondent's Brief in Support of Motion for Summary Disposition, p. 8.
[8] Respondent's Brief in Support of Motion for Summary Disposition, pp. 10 & 11.

could justify the plaintiff's claim for relief can the motion be granted. *Koenig v City of South Haven*, 460 Mich 667, 674; 597 NW2d 99 (1999).

Respondent also moves for summary disposition pursuant to MCR 2.116(C)(10). 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. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that 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; 469 NW2d 436 (1991).

The Michigan Supreme Court has established that 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. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (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. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (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; 507 NW2d 741 (1992).

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion and finds that granting this motion is warranted, based on the pleadings, stipulation of facts and other documentary evidence filed with the Tribunal. Respondent has proven that there is no genuine issue in respect to any material fact. MCR 2.116(C)(10). The Tribunal finds that the parties have submitted a stipulation of facts sufficient to justify judgment favoring Respondent.

The Michigan Use Tax Act, MCL 205.93(1), states "[t]here is levied upon and there shall be collected from every person in this state a specific tax for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price of the property . . . ." Exemptions from the tax are provided under MCL 205.94, which states in pertinent part:

> (1) The following are exempt from the tax levied under this act, subject to subsection (2):
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> * * * *
>
> (w) Property or services sold to an organization not operated for profit and exempt from federal income tax under section 501(c)(3) or 501(c)(4) of

> the internal revenue code, 26 USC 501; or to a health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued before June 13, 1994 an exemption ruling letter to purchase items exempt from tax signed by the administrator of the sales, use, and withholding taxes division of the department. The department shall reissue an exemption letter after June 13, 1994 to each of those organizations that had an exemption letter that shall remain in effect unless the organization fails to meet the requirements that originally entitled it to this exemption. The exemption does not apply to sales of tangible personal property and sales of vehicles licensed for use on public highways, that are not used primarily to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt organization.
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> * * * *
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> (2) The property or services under subsection (1) are exempt only to the extent that the property or services are used for the exempt purposes if one is stated in subsection (1) . . . . (MCL 205.94)

Tax statutes that grant tax credits or exemptions are to be narrowly construed in favor of the taxing authority because such statutes reduce the amount of tax imposed.[9] The exemption at issue in this case relates to use tax and whether it is extended to Petitioner on purchases of property or services. The statute clearly states that the exemption is available to "an organization not operated for profit and exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the internal revenue code. . . or to a health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued before June 13, 1994 an exemption ruling letter . . . unless the organization fails to meet the requirements that originally entitled it to this exemption."[10]

If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted. *Turner v Auto Club Ins Ass'n,* 448 Mich 22, 27; 528 NW2d 681 (1995). Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. *Luttrell v Dep't of Corrections,* 421 Mich 93; 365 NW2d 74 (1984). Here, MCL 205.94(1)(w) is the applicable statute for the tax years at question. It is clear and unambiguous, and requires no interpretation. Petitioner has stipulated that it is not exempt from federal income tax under the internal revenue code. It has further stipulated that "it derives at least a portion of its revenue from for-profit activities with its Non-Member Participants."[11] Petitioner does not qualify for exemption from use tax and it can only be assumed that the 1993 tax exemption letter had been issued in error. Regardless, the statute provides that an exemption "shall remain in effect unless the organization fails to meet the requirements that originally entitled it to this exemption."

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[9] *Auto-Owners Ins Co v Department of Treasury*, 226 Mich App 618, 621; 575 NW2d 770 (1995).
[10] MCL 205.94(1)(w)
[11] Joint Stipulation of Facts, p. 2.

The Tribunal finds that Petitioner failed to meet such requirements and is not entitled to the exemption. Further, Petitioner showed no reasonable cause for failure to file and pay the taxes owed, therefore, tax, penalties and interest in the amounts stated above are affirmed.

JUDGMENT

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

IT IS FURTHER ORDERED that Assessment No. N261083 is AFFIRMED.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: January 24, 2011 By: Cynthia J Knoll