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

City of Port Huron,
Petitioner,

v

MTT Docket No. 346980

Michigan State Tax Commission,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT UNDER MCR 2.116(I)(2)

INTRODUCTION

This matter involves a summary disposition motion filed by Petitioner, City of Port Huron, pursuant to MCR 2.116(C)(10). The subject property is real property leased by Michigan Bell for use in its telephone company business. In this motion, Petitioner requests that the Tribunal determine that the Michigan State Tax Commission incorrectly held in its Order 154-08-001 dated April 21, 2008 that Petitioner should remove parcel 74-06-167-0055-000 from its tax rolls for 2006 and 2007. For the reasons set forth herein, the Tribunal denies Petitioner's Motion and grants summary disposition in favor of Respondent pursuant to MCR 2.116(I)(2).

PETITIONER'S CONTENTIONS

Petitioner recognizes that MCL 207.4(1) specifically provides that "the state board of assessors shall annually determine the true cash value and taxable value of property having a situs in this state of all of the following . . . (d) telephone companies." Further, Petitioner agrees that MCL 207.5(4)(b) provides that for tax years after 2005 for telephone companies, "property having a situs in this state" includes "only the tangible property, real and personal, owned, used

and occupied by them within this state." As noted above, the subject property is leased by Michigan Bell rather than owned. Thus, Petitioner contends that Respondent does not have jurisdiction over the assessment of the subject property because the statute specifically requires that in order to obtain jurisdiction over its assessment by the State, the property must be owned **and** used **and** occupied by Michigan Bell. Simply, Petitioner contends that Respondent's interpretation of the statutory language (i.e., that the State Tax Commission obtains jurisdiction of the assessment of the subject property because the statute provides that the property can be "used and occupied **or** owned and occupied" (emphasis added)) is incorrect as the statutory language is clear and unambiguous. Petitioner relies on a recent Supreme Court decision regarding language contained in MCL 211.7o (where the statute provides that property must be owned and occupied for a charitable exemption to apply) that concluded that "owned" and "occupied" are separate and distinct conditions and both must be satisfied for exemption. *Liberty Hill Housing Corporation v City of Livonia,* 480 Mich 44 (2008). Petitioner thus contends that in order for the telephone company property to be subject to state assessment, all components of the statutory list ("owned", "used" and "occupied") must be satisfied. Petitioner further contends that Respondent's prior reliance on a 1971 Attorney General letter to the City of Rose City is in error because the letter was informal and not a more formal Attorney General Opinion and because the analysis of the law contained in that letter was incorrect. Specifically, the Attorney General letter concluded that although the statute can be read either way, the 1963 Michigan Constitution reinforces language contained in the 1908 Michigan Constitution which the Attorney General concludes provided for assessment of telephone company property, regardless of ownership, by the state. Contrary to the Attorney General conclusion in the informal letter to

Rose City, Petitioner states that the "owned, used, and occupied" language has been present in Michigan statute since 1905.

RESPONDENT'S CONTENTIONS

Respondent agrees with Petitioner that for tax years after 2005, MCL 207.4(2) grants Respondent the authority to determine the true cash value and taxable value of "property having a situs in this state" of telephone companies. Further, Respondent agrees with Petitioner that for telephone companies, MCL 207.5(4) (b) characterizes "property having a situs in this state" to include "only the tangible property, real and personal, owned, used and occupied by them within this state." Respondent contends that Petitioner's reading of the statute fails to take into consideration MCL 207.5(1)(b), which provides that "property" means, in part, "for telegraph companies and telephone companies only, for tax years that begin after December 31, 2005, only property that would be subject to the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, if that property were not subject to taxation under this act." Respondent further argues that MCL 207.5(1)(b) and 207.5(4)(b) must be read together, such that so long as the subject property would be subject to taxation under the General Property Tax Act "but for that property being subject to tax under 1905 PA 282," then the subject property is assessable by Respondent. Respondent further contends that the rule of statutory construction which applies to, for example, tax exemption statutes (see *Liberty Hill*), should not similarly apply here. Instead, Respondent looks to legislative intent, contending that the intent of the legislature in enacting the statute was to broadly define the property of telephone companies subject to assessment by the state rather than the local jurisdiction. Citing *Michigan Bell Telephone Company v Dep't of Treasury,* 445 Mich 470, 479; 518 NW2d 808 (1994), Respondent further states that the Supreme Court, in defining "property" concluded that

legislative intent should be broadly construed "to expansively include property not expressly enumerated in the statute." Thus, Respondent argues that "property" as used in Sec 5 "includes all real and personal property used in carrying on its business. Such property would include tangible real and personal property that is leased by a telephone company." Further, Respondent contends that Petitioner's reliance on an interpretation of the statute to allow state assessment of telephone company property only if such property is "owned **and** used **and** occupied" is incorrect for several reasons. For example, such an interpretation would preclude the assessment of personal property because personal property can not be "occupied," which Respondent contends is clearly contrary to the intent of the legislature. Further, Respondent contends that Michigan Bell uses the subject property "as part of an integrated group of assets functioning as an economic unit" to be assessed as one, rather than a portion of that group of assets being assessed by the state and another portion being assessed by the local municipality. Finally, Respondent notes that it has assessed the subject property for 2006 and 2007, and that assessment by Petitioner would result in double taxation to Michigan Bell.

FINDINGS OF FACT

On February 5, 2008, Respondent advised Petitioner in writing that "property assessed in your City is also being assessed by the State as telephone operating property. This particular parcel is leased by Michigan Bell and therefore is properly State Assessed and not locally assessed." Respondent further "asked" that the City of Port Huron remove the subject parcel from the assessment roll. Then, in correspondence from Respondent to Petitioner dated March 5, 2008, Respondent "ordered" Petitioner to remove the subject parcel from the 2008 assessment roll. Petitioner appealed Respondent's position to the State Tax Commission, and a hearing was held with Petitioner and Respondent on April 17, 2008. On April 21, 2008, Respondent issued

Official Order 154-08-001 directing Petitioner to reduce the assessed values and taxable values of Parcel 74-06-167-0055-000 for 2006 and 2007 to $0. Petitioner filed this appeal of Respondent's Order 154-08-001 on May 20, 2008.

APPLICABLE LAW

In the instant case, Petitioner filed a Motion for Summary Disposition under MCR 2.116(C)(10), which provides the following ground upon which a summary disposition motion may be based: "Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." There is no specific tribunal rule governing motions for summary disposition. As such, the Tribunal is bound to follow the Michigan -Rules of Court in rendering a decision on such a motion. TTR 111(4).

The Michigan Supreme Court, in *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996), provided the following explanation of MCR 2.116(C)(10).

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure…[T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
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> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.
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> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted 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 the affidavits or other documentary evidence show that 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. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. (*Id*., pp361-363) (Citations omitted.)

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). On the other hand, under MCR 2.116(I)(2), "[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." In the instant case, the Tribunal finds that there is no genuine issue of material fact and that Respondent is entitled to judgment as a matter of law.

CONCLUSIONS OF LAW

The Tribunal finds that MCL 207.4 clearly provides that real property leased by Michigan Bell is subject to assessment by the State and not by Petitioner. Petitioner's narrow, literal reading of the applicable statutes is not supported by argument or case law. In fact, other than a contention that the Supreme Court (in *Liberty Hills*) had "recently rejected a reading of a similar statute in the manner the Commission reads MCL§207.5," Petitioner fails to provide any case law or legislative history in support of its interpretation of the statute. Further, the Tribunal rejects Petitioner's conclusion that the Supreme Court, which strictly construed the phrase "owned and occupied" as found in MCL 211.7o, which is a charitable exemption statute, would similarly strictly construe the statutory language at issue here, since MCL 207.5 is not a tax exemption statute and is therefore not to be strictly construed. Instead, the Tribunal finds that a

broader construction of this definitional provision must be applied. Specifically, Petitioner asks the Tribunal to accept a statutory provision that carves out for the State the authority to assess the tangible real and personal property used by a telephone company in its business, but only if the telephone company owns the property, with property leased by the telephone company and used in its business to be assessed by the local municipality. The statutory interpretation proposed by Petitioner simply makes no sense. Not only has Petitioner failed to provide any logical or practical reason for such bifurcation of assessing responsibilities, but Petitioner has also failed to provide any legislative history in support of its position. The Tribunal finds no basis to support Petitioner's contention that to qualify for State assessment of telephone company property pursuant to MCL 207.4 and MCL 207.5, such property must be "owned" **and** "used" **and** "occupied" by the telephone company. The Tribunal agrees with Respondent that the rules of statutory construction conclude that "statutes are to be construed in a fashion that would not render a part of a statute surplusage or nugatory." Adopting Petitioner's position would render MCL 207.5(1)(b) surplusage.

Additionally, the Tribunal finds that while there are no genuine issues of material fact, Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) must be denied and that Respondent shall be granted summary disposition under MCR 2.116(I)(2).

Therefore,

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

IT IS FURTHER ORDERED that Summary Disposition in favor of Respondent pursuant to MCR 2.116(I)(2) is GRANTED.

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

MICHIGAN TAX TRIBUNAL

Entered: October 21, 2010 By: Steven H. Lasher