

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

Enbridge Energy, Ltd. Partnership,
Petitioner,

v

MTT Docket No. 350541

Garden Township,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

CORRECTED FINAL OPINION AND JUDGMENT

An order was entered in this matter by the Tribunal granting Petitioner's Motion for Summary Disposition, and thereby, dismissing the above-captioned case on July 17, 2009. Upon review of the case file, the Tribunal finds that it inadvertently omitted the appropriate judgment language which instructs the parties on how to proceed consistent with the Final Opinion and Judgment. However, this oversight on the Tribunal's part does not change the ultimate outcome.

With these amendments, the Tribunal adopts and incorporates by reference the findings and conclusions of law in the Final Opinion and Judgment as the final decision of the Tribunal.

IT IS ORDERED that the subject property's true cash, state equalized, and taxable values for the tax year at issue are as set forth in the Final Opinion and Judgment as adopted by this Corrected Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Corrected Final Opinion and Judgment within 20 days of the entry of the Corrected Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Corrected Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Corrected Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005,

at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (v) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: August 6, 2009
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By: Kimbal R. Smith III

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

Enbridge Energy, Ltd. Partnership,
Petitioner,

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MTT Docket No. 350541

Garden Township,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

OPINION AND JUDGMENT

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

I. INTRODUCTION

Petitioner, Enbridge Energy, is appealing the taxable value determined for the subject property by Respondent, Garden Township, for tax year 2008. On March 27, 2009, Petitioner filed a motion requesting the Tribunal to render judgment in its favor pursuant to MCR 2.116(C)(10). Respondent has not filed a response to Petitioner's Motion for Summary Disposition.

II. PETITIONER'S CONTENTIONS

Petitioner contends Respondent failed to properly determine the 2008 taxable value for the subject property. Furthermore, Petitioner argues that if Respondent determined the taxable value for 2008 as set forth under MCL 211.27a(2), the taxable value would have been properly calculated. Moreover, Petitioner directs attention to the Michigan State Tax Commission Bulletin No. 12, issued on November 16, 2007. According to Petitioner, if the subject property's 2008 capped value is calculated by applying the 2008 inflation factor of 1.023% and the 2008 capped value formula as provided by Bulletin No. 12, that it would be entitled to a judgment as a matter of law under MCL 2.116(C)(10). The formula provided in Bulletin No. 12 is as follows: 2008 Capped Value = (2007 Taxable Value – Losses) X 1.023 + Additions.

Petitioner cites the Consent Judgment issued by the Tribunal in MTT Docket No. 301633, which involved the same parcel number in dispute in the above-captioned case, specifically with respect to the 2007 taxable value determined as \$152,653. Petitioner contends that by applying the formula in Bulletin No. 12 and inserting the appropriate figures in the instant matter, it would read as follows: 2008 Capped Value = (\$152,653 – \$0) X 1.023% + \$2,575.00 = \$158,739.00. Moreover, Petitioner asserts that “[s]ince the state equalized value for 2008 was \$407,581.00 and is greater than the 2008 capped value, the 2008 taxable value for this parcel is \$158,739.00 [pursuant to] MCL 211.27a.”

Finally, Petitioner contends that since Respondent has not filed an answer in this case and has been already placed in default by the Tribunal, it further indicates that there are no undisputed facts.

III. FINDINGS OF FACT

The property under appeal is classified as personal utility, for purposes of property taxes, and is identified as parcel number 21-010-900-002-00. Petitioner filed a timely petition with the Tribunal on May 30, 2008, solely contesting the taxable value for the subject property for tax year 2008. Although Respondent was properly served by Petitioner with its Petition on May 30, 2008, it has failed to timely file an answer with the Tribunal. Furthermore, albeit being placed in default on February 11, 2009, for its failure to file an answer, Respondent has yet to file an answer and remains in default. On February 17, 2009, Respondent made a written request with the Tribunal to “[p]lease mail the materials relative to the above noted docket to me . . . I hereby certify that I did not receive a copy of the original petition, or any supporting materials.”

Before Petitioner filed its appeal in the above-captioned case with the Tribunal, the same parcel number involved in this matter had been under dispute before the Tribunal with respect to prior taxable years in MTT Docket No. 301633. Unlike the issue in the case at bar, the issue in MTT Docket No. 301633 related to the valuation of the subject property. Moreover, a Consent Judgment was entered on December 7, 2007, reflecting the true cash, state equalized, and taxable values of the subject property as \$305,305, \$152,653, and \$152,653, respectively, for tax year 2007.

IV. APPLICABLE LAW

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated “[a] motion for summary disposition under MCR 2.116(C)(10) tests 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. *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).

V. CONCLUSIONS OF LAW

This Tribunal has carefully considered Petitioner's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10) and based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting Petitioner's Motion is appropriate.

The Tribunal concludes that the pleadings and documentary evidence prove that there is no genuine issue with respect to any material fact. Specifically, the Tribunal concludes that the subject

property's taxable value was incorrectly determined by Respondent pursuant to MCL 211.27a(2).

MCL 211.27a(2) states, in pertinent part, that after 1995, the taxable value for each parcel of property shall be the lesser of the following:

(a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all addition. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.

(b) The property's current state equalized valuation.

As such, applying the inflation rate for 2008 provided in Michigan State Tax Commission Bulletin No. 12 of 1.023%, since it is the lesser of 1.05%, and the 2007 taxable value of \$152,653, the correct taxable value for the subject property in 2008 is \$158,739. In that regard, Respondent incorrectly determined the taxable values of the subject property for the 2008 tax year. Thus, since the sole issue in dispute in the above-captioned case was the taxable value of the subject property for 2008, Petitioner is entitled to judgment as a matter of law under MCR 2.116(C)(10).

Furthermore, although Respondent contends that it did not receive Petitioner's original Petition, the Tribunal finds that Respondent was properly served on May 30, 2008, as evidenced by Petitioner's proof of service. In addition, not only has Respondent failed to file an answer in the above-captioned case, but it has also failed to file a response to Petitioner's Motion for Summary Disposition. As such, Respondent has not provided any documentary evidence to support the finding of disputed facts that may establish the existence of material facts as to any genuine issue in this matter. Thus, the Tribunal finds that granting Petitioner's Motion is appropriate. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

Therefore, Petitioner has established that there are no genuine issues of material fact in the above-captioned case, and Petitioner is entitled to judgment as a matter of law.

VI. JUDGMENT

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

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

MICHIGAN TAX TRIBUNAL

Entered: July 17, 2009
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By: Kimbal R. Smith III