STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Schefenacker Vision Systems USA, Inc,
Petitioner,

v

MTT Docket No. 355152

City of Marysville,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith, III

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR ORAL ARGUMENT

ORDER OF DISMISSAL

INTRODUCTION

Petitioner is appealing the assessment of its industrial personal property for the 2005 tax year under MCL 211.53a. Although Petitioner submitted personal property statements, Respondent audited the subject personal property for the 2005 tax year and submitted a petition to the Michigan State Tax Commission (STC) under MCL 211.154 proposing to revise the property's assessment for the 2005 tax year to account for certain property as previously omitted property. Even though the STC issued an Order revising the property's assessments for the 2005 tax year, Petitioner contends that the original assessment was based on the erroneous personal property statements it filed with Respondent and the parties' "mistaken reliance" on Respondent's audit, thus resulting in incorrect assessments based on a mutual mistake of fact. The Tribunal disagrees. In that regard, there is no genuine issue of material fact outstanding with regard to the basis of the assessments, as

issued by the STC, and, more importantly, no mutual mistake of fact relative to the establishing of those assessments. As such, the assessments as established by the STC are affirmed.

RESPONDENT'S CONTENTIONS

Respondent contends that "the Tribunal lacks jurisdiction over this matter" and that "there is no contested issue of material fact" such that Respondent is entitled to summary disposition or dismissal. Respondent also contends that the revised assessments for the tax years at issue were the result of an audit, not Petitioner's Personal Property Statements, and there is no mutual mistake of fact as contemplated by MCL 211.53a. Respondent further contends that, because there is no mutual mistake of fact, Petitioner was required to file its appeal within 35 days of the October 18, 2006 STC Order, which it did not and, as a result, the Tribunal does not have authority over the assessments at issue.

Respondent contends that the facts of the instant case are as follows:

a. The subject parcel, identified as 74-03-999-0235-000, is classified as industrial personal property.

b. "…in 2005 St Clair County was the beneficiary of a grant to allow for various personal property audits, including Petitioner's personal property."

c. Petitioner was notified by letter dated January 20, 2005 of the upcoming audit.

d. The audit was conducted by Tax Management Associates, including "a visit to Petitioner's premises by Mr. Consiglio," an employee of Tax Management Associates. Discussions between the auditor and Petitioner continued after the audit was completed in September of 2005 and during these discussions, "a meeting concerning this tax parcel was scheduled by the…STC for March 22, 2006." That meeting was postponed, at Petitioner's request, in an attempt to "discuss a resolution" prior to any STC action.

e. "…the negotiations did not result in a resolution for tax year 2005 and…Respondent…requested the assessment indicated by the audit be approved by the STC."

f. "…a hearing was…scheduled before the STC for October 11, 2006." Both Petitioner and Respondent were notified about the hearing time and location "by a letter from the STC dated August 10, 2006." Despite notice, "no representative of Petitioner appeared at the hearing" and "the STC determined that the assessments should be affirmed as requested."

g. The STC Order adding the previously omitted personal property to the 2005 assessment "was issued October 18, 2006."

h. "…in 2008 Petitioner apparently had its own personal property audit performed" and following the completion of that audit "appeal was filed in this case under date of July 24, 2008."

Respondent asserts that, based on the facts of this case, "Petitioner's reliance on MCL 211.53a and 211.53b, via *Ford Motor Company v City of Woodhaven, et al*, 475 Mich 425; 716 NW2d 247 (2006)…is misplaced." Respondent also asserts that "the question of whether there was reliance by the assessors on the personal property tax statements filed was not in dispute in any of those cases. That is, quite simply, not the case here." Rather, for the 2005 tax year, "the assessor did not rely upon Petitioner's personal property tax statement as filed." The assessor "did just the opposite…through…funds…made available to conduct a personal property tax audit of Petitioner's personal property for the 2005 tax year." As such, Respondent's assessor completed her own analysis independent of the personal property tax statements filed by Petitioner. The in-person audit concluded that the "assessed and taxable value for Petitioner's personal property for the 2005 tax year should be increased." Clearly, Respondent asserts, an independent, on site audit that arrived at a different value entirely is not based on the statements as filed and

shows that there was no mutual mistake of fact for the 2005 assessment pursuant to *Ford Motor*.

Respondent further asserts that Petitioner cannot "merely claim a mutual mistake of fact without putting forth sufficient evidence in support of the crucial element of reliance by Respondent's assessor." In that regard, Respondent attempted, through its interrogatories, to elicit from Petitioner the basis for its allegations with regard to reliance and Petitioner was "non-responsive" to each interrogatory regarding the alleged reliance by Respondent leading to a "mutual mistake of fact."

Respondent relies on *Ballard Powers Systems, Inc v City of Dearborn,* Court of Appeals Docket No. 268458, an unpublished opinion of the Michigan Court of Appeals in which the Tribunal's grant of summary disposition in favor of the respondent was upheld. Respondent indicates that in *Ballard,* as is the case here, the petitioner did not actually rely on the respondent's audit report, making the case distinguishable from *Ford Motor*. In the instant case, Respondent contends that "Petitioner did not rely on the audit which Respondent had prepared" because Petitioner "secured its own independent audit upon which it now seeks to rely," indicating Petitioner doubted the accuracy of Respondent's audit.

Respondent also relies on *ACI Holdings, Inc v Township of Sylvan,* Court of Appeals Docket No. 278263, a 2008 unpublished opinion of the Court of Appeals, wherein in the court "affirmed the Tribunal's Order Granting summary disposition to [R]espondent." Respondent asserts that in *ACI*, the Tribunal found that the petitioner "failed to establish any basis for finding that the mistake was, in fact 'mutual.'" Respondent also asserts that Petitioner "now seeks to claim that its original 2005 personal property tax statement was the result of the mistake, that

Respondent's independent audit was the result of a mistake and that…these two independent mistakes were somehow mutual. That defies logic."

PETITIONER'S CONTENTIONS

Petitioner contends that its appeal is timely pursuant to MCL 211.53a, as two mutual mistakes of fact between Petitioner and Respondent served as the basis for the original assessment and the revised assessment for the 2005 tax year. Petitioner contends that the first mutual mistake of fact is based upon the parties' reliance on the erroneous 2005 personal property statement. Petitioner asserts that the second mutual mistake of fact is rooted in the parties' reliance on the accuracy of the 2005 audit performed by Respondent's auditor, which was submitted to the STC for approval. Petitioner asserts that, because each mutual mistake of fact resulted in an erroneous assessment, as Respondent originally adopted its personal property statement as fact and thereafter Petitioner agreed with the audit as it was submitted to the STC, Petitioner's July 2008 filing with the Tribunal is timely.

Petitioner asserts that "Respondent accepted Petitioner's flawed 2005 personal property statement when [Respondent] set the 2005 assessment." That statement, Petitioner also asserts, served as the basis for Respondent's original 2005 assessment and the subsequent tax bill which Petitioner paid. Because the 2005 personal property statement "misreported some information," the assessment was erroneous. Petitioner further asserts that the subsequent revision by the STC is irrelevant as the original assessment "remained in place for over a year before the STC issued an order that increase the 2005 assessment." Regardless of any subsequent revision, "this constituted a mutual mistake of fact that is intended to be remedied under MCL 211.53a."

Petitioner contends that, in the alternative, the STC-revised 2005 assessment is based on a mutual mistake of fact. Specifically, Petitioner indicates that the

audit that led to the STC-approved revisions was based on "Petitioner's erroneous personal property asset records." Petitioner also indicates that, because Respondent's auditor relied on certain erroneous records, and Petitioner and Respondent relied on the result of that audit as accurate, the values approved by the STC that represent the revised 2005 assessment are based on a mutual mistake of fact.

FINDINGS OF FACT

Petitioner is the owner of certain industrial personal property known as Parcel No. 74-03-999-0235-000. Petitioner submitted its personal property statement to Respondent on or about February 16, 2005. Respondent assessed Petitioner's property for the 2005 tax year and a tax bill was issued. Petitioner paid the taxes levied based on the original assessment.

Respondent, following receipt of grant funds, audited select properties within its jurisdiction in 2005, including the subject property. The audit was either conducted soon after the original assessment was issued or simultaneous to the issuance of the original 2005 assessment notice. The audit included an on-site inspection and reconciliation of the personal property statement to the physical property and Petitioner's financial and business records. The audit determined that certain property was omitted from the original assessment. As a result, Respondent initiated an action pursuant to MCL 211.154 with the STC to include previously omitted property to the 2005 assessment. Respondent attended the October 11, 2006 STC hearing. Petitioner did not attend. The STC, acting in an adjudicative capacity, issued its Order adding the previously omitted personal property on October 18, 2006. Petitioner did not appeal that decision within 35 days of the issuance of the Order.

Following Petitioner's own third-party audit, it determined that certain personal property thought to be on site as of December 31, 2004 was not, in fact, at that location. Thereafter, on July 24, 2008, Petitioner appealed to the Tribunal claiming a mutual mistake of fact. The assessments were not, however, the result of a mutual mistake of fact, and, assuming *arguendo* that Petitioner has identified a commonly shared misconception, the STC acted in an adjudicative capacity and not in an assessing capacity. Therefore, the alleged mistake was not between the assessing officer and the taxpayer; rather, the assessments were the result of an adjudicative determination that required an appeal within 35 days of the issuance of that decision.

APPLICABLE LAW

There is no specific tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions. TTR 111(4). In the instant case, Respondent moved for summary disposition under MCR 2.116(C)(4), (C)(7), and (C)(10).

Respondent moves for summary disposition pursuant to MCR 2.116(C)(4). This Court Rule states that a motion for summary disposition is appropriate where the "…court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). When presented with a motion for summary disposition pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties. MCR 2.116(G)(5). In addition, the evidence offered in support of or in opposition to a party's motion will only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion. MCR 2.116(G)(6). A motion for summary disposition pursuant to MCR

2.116(C)(4) is appropriate where the plaintiff has failed to exhaust administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43; 620 NW2d 546 (2000). Furthermore:

> A motion under MCR 2.116(C)(4), alleging that the court lacks subject matter jurisdiction, raises an issue of law. The issue of subject matter jurisdiction may be raised at any time, even for the first time on appeal. *McCleese v Todd*, 232 Mich App 623, 627; 591 NW2d 375 (1998) ("Lack of subject matter jurisdiction may be raised at any time."); *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997) ("Although the jurisdictional issue here was never resolved by the trial court, a challenge to subject-matter jurisdiction may be raised at any time, even for the first time on appeal."). When a court lacks jurisdiction over the subject matter, any action it takes, other than to dismiss the case, is absolutely void. *McCleese*, 232 Mich App at 628; 591 NW2d at 377. The trial court's determination will be reviewed de novo by the appellate court to determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether affidavits and other proofs show that there was no genuine issue of material fact. *See Cork v Applebee's of Michigan, Inc*, 239 Mich App 311; 608 NW2d 62 (2000) ("When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show that there was no genuine issue of material fact."); *Walker v Johnson & Johnson Vision Products, Inc*,

217 Mich App 705; 552 NW2d 679 (1996); *Faulkner v Flowers*, 206 Mich App 562; 522 NW2d 700 (1994); *Department of Natural Resources v Holloway Construction Co*, 191 Mich App 704; 478 NW2d 677 (1991). 1 Longhofer, Michigan Court Rules Practice § 2116.12, p 246A.

Respondent further moves for summary disposition pursuant to MCR 2.116(C)(7). Under MCR 2.116(C)(7):

> The claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of action.

In *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678; 762 NW2d 529 (2008), the Michigan Court of Appeals addressed a motion for summary disposition filed under MCR 2.116(C)(7). In *RDM*, the court stated:

> [T]his Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in

> 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate. (Citations omitted). *Id.* at 687.

Summary disposition is appropriate under MCR 2 .116(C)(7) when a claim is barred by a statute of limitations. A motion for summary disposition under MCR 2.116(C)(7) may be supported by affidavits, depositions, admissions, or other documentary evidence, which the Court must consider if they are submitted. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999), citing MCR 2.116(G)(5). Where there is no factual dispute, the issue whether a claim is barred by the statute of limitations is a question of law reviewed de novo. *Colbert v Conybeare Law Office*, 239 Mich App 608, 613-614; 609 NW2d 208 (2000); *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 279; 769 NW2d 234 (2009).

The Tribunal finds that Respondent's Motion for Summary Disposition pursuant to MCR 2.116(C)(7) is supported by the facts of this case as Petitioner has failed to establish a mutual mistake of fact. As a result, Petitioner was required to file its appeal within 35 days of the issuance of the STC determination as provided by MCL 205.735a. Petitioner did not appeal to the Tribunal until nearly two years after the STC Order, and as such, Petitioner has failed to properly invoke the Tribunal's jurisdiction in this matter. See also *Electronic Data Systems Corporation v Township of Flint*, 253 Mich App 538; 656 NW2d 215 (2002).

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion for Summary Disposition under MCR 2.116(C)(4), (C)(7), and (C)(10) and, based on the pleadings and other documentary evidence filed by the parties, determines that

granting Respondent's Motion for Summary Disposition under MCR 2.116(C)(7) is appropriate as Petitioner has failed to establish a mutual mistake of fact. As a result, Petitioner was required to file its appeal within 35 days of the issuance of the STC determination as provided by MCL 205.735a. Petitioner did not appeal to the Tribunal until nearly two years after the STC Order, and as such, Petitioner has failed to properly invoke the Tribunal's jurisdiction in this matter. Therefore, the above-captioned case must be dismissed and oral argument is unnecessary.

JUDGMENT

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

IT IS FURTHER ORDERED that Respondent's Motion for Oral Argument is DENIED.

IT IS FURTHER ORDERED that this case is DISMISSED.

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

MICHIGAN TAX TRIBUNAL

Entered: May 6, 2011 By: Kimbal R. Smith III