

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

New Gratiot Party Store LLC,
Petitioner,

v

MTT Docket No. 449148

Department of Treasury,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

FINAL OPINION AND JUDGMENT

On May 30, 2013, Administrative Law Judge Thomas A. Halick issued a Proposed Order partially granting Respondent's motion for summary disposition and entering judgment in favor of Respondent under MCR 2.116(I). The Proposed Order states, in pertinent part, "[t]he parties have 20 days from date of entry of this Proposed Order to file any written exceptions and written arguments with the Tribunal consistent with Section 81 of the Administrative Procedures Act (MCL 24.281). The exceptions and written arguments shall be **limited** to the matters addressed in the motions." (Emphasis added.)

On June 13, 2013, Petitioner filed exceptions to the Proposed Order. In the exceptions, Petitioner states:

Petitioner's liability is statutorily limited to the fair market value of the business purchased as Referee Blough pointed out in her Informal Conference Recommendation which is part of the record. Referee Blough further determined that value to be \$45,000.00. Neither party . . . challenged that determination. Therefore, by law, Petitioner's liability is capped at \$45,000.00.

Respondent has not filed exceptions to the Proposed Order or a response to Petitioner's exceptions.

The Tribunal, having given due consideration to the exceptions and the case file, finds that the Administrative Law Judge properly considered the pleadings and

other documentary evidence filed by the parties in the rendering of the Proposed Order. The disputed assessments were issued under MCL 205.27a(1), and Petitioner failed to plead or argue a valid defense to its liability as a successor. As noted by the Administrative Law Judge, “[t]here is no dispute that the subject assessments were issued against the predecessor entity and have become final obligations. Petitioner has not claimed that it obtained a tax clearance certificate, placed funds in escrow to satisfy the seller’s tax debts, or that it is otherwise not personally liable . . . for the payment of taxes, interest, and penalties accrued by the business of the seller.” Although the Administrative Law Judge also states that “Petitioner has not claimed that its liability is limited by the fair market value of the business or assets acquired,” the Tribunal finds that he intended to note the lack of any claim by Petitioner that its liability was *further* limited by the fair market value of the business, as Respondent’s Decision and Order of Determination, which was issued on November 9, 2012, accepted the Referee’s Informal Conference Recommendation and ordered that Petitioner’s liability be “limited to a total aggregate liability not to exceed \$45,000.00.” Respondent was required, pursuant to its Decision and Order of Determination, to “issue final assessments against [Petitioner] . . . in the total amount of \$45,000.” Notwithstanding that Petitioner failed to pay the uncontested portions of Final Assessment Nos. P457322, P576316, P654715, P731394 and P923256 as required by MCL 205.22(1) and *Toaz v Dep’t of Treasury*, 280 Mich App 457; 760 NW2d 325 (2008), it is this determination that is affirmed by the Administrative Law Judge’s entry of judgment in favor of Respondent under MCR 2.116(I) for Final Assessment No. Q763842.

Given the above, Petitioner has failed to show good cause to justify the modifying of the proposed orders granting Respondent’s motion for summary disposition and entering judgment in favor of Respondent under MCR 2.116(I). As such, the Tribunal adopts the Proposed Order as the Tribunal’s final decision in this case. See MCL 205.726. The Tribunal also incorporates by reference the Conclusions of Law contained in the Proposed Order in this Final Opinion and Judgment.

By: Kimball R. Smith III

Entered: July 11, 2013

