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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

September 12, 2019

Dear Tax Tribunal Practitioner:

Michigan Tax Tribunal Town Hall

The Michigan Tax Tribunal is reviving the practice of annual town halls to be held around the state. The first two are scheduled for this October, with the first being held on Thursday, October 10th at the Grand Rapids Township Hall, and the second on Monday, October 14th at the Novi City Auditorium. Both events will run from 1:00 to 4:00 pm and are open to the public, no reservations are required. The agenda will include updates from the Tribunal, as well as a question and answer session in which participants can voice their concerns. Future town halls are planned, although dates and locations have not been finalized as of this writing.

Tribunal E-mails

As of August 29, 2019, emails generated form the Tribunal's case management system will be from NoReply-MOAHR@michigan.gov. If you believe these emails are not being delivered to your inbox, please check your spam or junk mail folders and also designate this a "safe" email.

Tribunal Website

The Small Claims section of the website has been updated to more clearly identify and locate Small Claims forms. Forms are now broken into the following categories: (1) Petition Forms, (2) Answer Forms, (3) Other Forms, and (4) Stipulation Forms.

The Tribunal also reminds you that it maintains a Hearings Calendar on our website where you can find both Small Claims and Entire Tribunal hearings scheduled to be heard. You are strongly encouraged to cross-check the Tribunal's calendar with the docket lookup for an individual case for the most up-to-date information.

Recent Appellate Opinions

The Michigan Court of Appeals has issued several recent opinions. Following is a synopsis of a number of cases which a tax practitioner may find useful and relevant.

Int'l Tennis Corp v. City of Southfield, unpublished per curiam opinion of the Court of Appeals, issued June 18, 2019 (Docket Nos. 342928 and 342932).

Petitioner appealed the Tribunal's determination of the true cash value (TCV) of one parcel of real estate and two parcels of personal property for the 2015, 2016 and 2017 tax years. Petitioner and Respondent both offered expert testimony based on the three approaches to valuation: the capitalization-of-income approach, the sales-comparison approach and the cost-less-depreciation approach. For the real property, the Tribunal found Petitioner's presentations on all three approaches were not credible and were given no weight. The Tribunal gave no weight to Respondent's sales-comparison approach but did find credible Respondent's income approach and cost-less-depreciation approach. The Tribunal found that Respondent's cost approach was the most reliable indicator of value. However, the Tribunal independently arrived at a TCV for each tax year that was different from Respondent's determinations. For the personal property, the Tribunal gave no weight to Petitioner's evidence, and found that Respondent's evidence based on personal property statements and fixed asset lists were the most reliable evidence. The Tribunal rejected Petitioner's evidence as not credible and accepted the evidence provided by Respondent's tax assessor as the best indication of TCV. Petitioner contends that the Tribunal erred when it determined the TCV of the subject real property. Petitioner contends that the Tribunal relied on erroneous statements of fact; abused its discretion when applying the law; cited or adopted "misstated, incorrect or unsupported/unsupportable assumptions regarding appraisal principles"; fundamentally disregarded Petitioner's expert's work; rendered a decision that "was in violation of logic or reason"; often confused matters of opinion and fact; and made factual errors when discussing expert's sales-comp approach to valuation. For the personal property, Petitioner challenged most of the Tribunal's findings of fact regarding the valuation of the personal property. The Court of Appeals reversed and remanded the Tribunal's decision. For the real property, the Court found all of Petitioner's arguments to be without merit. However, the Court also found that the Tribunal arrived at determinations of TCV for each tax year that were unsupported by "facts or calculations." The Court found that the Tribunal's final opinion and judgment did not "contain sufficient information to demonstrate how the tribunal arrived at its TCV calculations." For the personal property, the Court found that the Tribunal made no

errors of fact and that the Tribunal's factual findings were adequately supported by the record. However, the Court found that the Tribunal committed an error of law regarding the valuation of property because it relied on respondent's values and did not conduct an independent evaluation of the value. For the real property, the Court reversed and remanded the case for further proceedings. For the personal property, the Court affirmed the Tribunal's findings of fact but reversed and remanded the case for the Tribunal to make the "required, independent determination."

Delta Business Ctr v Delta Charter Twp, unpublished per curiam opinion of the Court of Appeals, issued June 20, 2019 (Docket No. 343386).

Petitioner appealed from the Oakland Circuit Court's opinion and order affirming the State Tax Commission's (STC) denial of an application for tax exemption under the Plant Rehabilitation and Industrial Development Districts Act (PRIDDA). Petitioner owned and leased property. Petitioner, as lessor, filed an industrial facilities exemption certificate (IFEC) with the township as required to claim the exemption. The township agreed to grant the exemption. On review, the STC denied the exemption because Petitioner's activity, real-estate development, was not a listed activity under MCL 207.552(7), resulting in the subject property failing to meet the definition of "industrial property." The circuit court affirmed the STC decision to deny the exemption, but on different grounds. MCL 207.552(7) says "Industrial property may be owned or leased. However, in the case of leased property, the lessee is liable for payment of ad valorem property taxes and shall furnish proof of that liability." The circuit court determined that Petitioner offered no proof of the lessee's liability for payment of property taxes, and the STC was authorized by law to deny Petitioner's application. Petitioner contended that the STC's denial of Petitioner's IFEC application was a material error of law or otherwise violated PRIDDA. Petitioner contended that MCL 207.555(1) is controlling, which states "the owner or lessee of a facility may file an application for an industrial facilities exemption certificate . . ." Petitioner further contended that requirements placed on lessees by MCL 207.555(7) were not relevant here because Petitioner, not its tenants, was seeking the exemption. The Court of Appeals affirmed the denial of Petitioner's application. The Court rejected Petitioner's argument that MCL 207.555(1) was controlling, explaining that the fact that Petitioner could file an application did not resolve whether Petitioner was entitled to the exemption. The Court also rejected the STC's reasoning for denying the exemption, that the *IFEC applicant* must engage in a listed activity. The STC's denial imposed a requirement that is not present in the statute. However, the Court upheld the denial of the exemption based on the circuit court's decision. The broad language of MCL

207.552(7) indicates the lessee must always be liable for the property tax. If the lessee must be liable for the property tax, then where leased property is involved only the lessee is able to claim the exemption under PRIDDA. This interpretation is supported by the lack of restrictive language in the statute and the statute's history. The Court also indicated that the statutory language reflected a Legislative policy decision, which the Court does not question. Therefore, Petitioner was not entitled to the tax exemption under PRIDDA based on the requirement of MCL 207.555(7) that the lessee is liable for payment and furnishes proof of that liability.

Nasim v City of Highland Park, unpublished per curiam opinion of the Court of Appeals, issued June 25, 2019 (Docket No. 343019).

Petitioner appealed the Tribunal's determination affirming Respondent's valuation of the subject property. Petitioner purchased the property for $52,400 at a foreclosure auction. Respondent valued the property at a higher amount. The property was in disrepair and not prepared to be leased at the time of its purchase. Comparable properties were "industrial, 'Class C Manufacturing' buildings of comparable sizes specifically built between 1940 and 1947." The Tribunal's Proposed Opinion and Judgment was incorrect about whether the comparable properties were vacant at the time of sale. Respondent provided evidence indicating the subject property could be valued between $7.84 per square foot and $10.83 per square foot. Respondent assessed the property at $6.06 per square foot. Petitioner argued that the Tribunal erred by finding that the value of the subject property was greater than the price paid for it at a foreclosure auction. Petitioner also argued that the Tribunal erred in relying on the sales comparison approach because properties provided were not comparable. The Court affirmed the Tribunal's decision. Citing MCL 211.27(1), the Court stated that "true cash value" is the standard for valuing property. True cash value is the "probable price that a willing buyer and a willing seller would arrive at through arm's length negotiation." The Court stated, "[i]t is well established that the sale price from a forced sale and public auction by government agencies is not representative of true cash value." The Court found that Petitioner failed to submit evidence regarding the comparable sales to support the appropriate market-based adjustment for the occupancies. Petitioner has the burden of proof, and it was not sufficient to "[s]imply identify[] a factor that the Tribunal could have considered without further evidence or argument[.]" Therefore, the Court found that Petitioner's contention regarding the sale price was without merit. Petitioner did not meet the burden of proof to establish that the Tribunal's calculation of value "through the sales-comparison approach was unsupported by competent, material, and substantial evidence [.]"

Williams v City of Eastpointe, unpublished per curiam opinion of the Court of Appeals, issued July 11, 2019 (Docket No. 344942).

Respondent appealed the Tribunal's granting of a Disabled Veteran Exemption. Petitioner was married to a deceased disabled veteran. She claimed the

Disabled Veteran Exemption as a surviving spouse as provided by MCL 211.7b(2). Respondent denied her application based on documentation indicating her husband was only 90% disabled. Documentation indicated he was receiving benefits based on 100% disability. The Tribunal consulted the VA's official website to confirm the benefit amounts. Petitioner argued based on MCL 211.7b(3)(a) that the amount of the benefit provided to her late husband established that the VA considered him 100% disabled. Based on the documentation, including Respondent's own documentary evidence, and Petitioner's testimony, the Tribunal found that Petitioner qualified for the exemption. Respondent argued that Petitioner failed to present competent, material, and substantial evidence to support her position, specifically that she failed to submit any helpful documentary evidence and that her testimony was riddled with "conflicting testimony." Respondent further argued that the Tribunal improperly assisted Petitioner by conducting research on her behalf. Finally, Respondent argued that the Tribunal could not consider Petitioner's claim under MCL 211.7b(3)(a) when she cited only subsection (b) in her original petition. The Court affirmed the Tribunal's decision. On the evidence issues, the Court stated that "we may not interfere with the MTT's 'credibility determinations' or resolutions as to conflicting evidence . . . [a]nd we may not second-guess the MTT's discretionary decisions regarding the weighing of the evidence." The Court did not consider the MTT's consultation of the VA website to be research on behalf of Petitioner. "Rather, petitioner testified about information on the VA website that supported her claim and the MTT reviewed the website to verify the accuracy or veracity of petitioner's statement." The Court determined that the Tribunal could consider Petitioner's claim under MCL 211.7b(3)(a) because "[a] proceeding before the [MTT] is original and independent and is considered de novo." As such, the Tribunal may take new evidence and hear new testimony. Therefore, the Tribunal committed no error in determining that Petitioner is entitled to the Disabled Veteran Exemption under MCL 211.7b(2).

Slagter v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued July 23, 2019 (Docket No. 343763).

Petitioner appealed the Tribunal's determination that Respondent properly denied a

Principal Residence Exemption ("PRE") for the 2013, 2014, and 2015 tax years. The Tribunal also determined that, despite having transferred the properties before taxes, interest, and penalty were assessed, Petitioner was liable because he transferred to a bona fide purchaser. Petitioner claimed the PRE by submitting an affidavit stating that he owned and occupied the subject properties for the 2013, 2014, and 2015 tax years. However, there was no dispute that he did not occupy the properties. Petitioner contended before the Tribunal that his wife occupied the properties. Petitioner also argued before the Tribunal that he and his wife were a single owner and thus a separate affidavit was not necessary. Before the Court, Petitioner argued the he had claimed the PRE on behalf of his wife. The Court held that MCL 211.7cc(2)'s plain language precluded this. MCL 211.7cc(2) states that an owner must file an affidavit. An owner is an individual under that section's definitions. The Legislature limited the definition of "person" to an individual, as opposed to MCL 211.7ee, where a person may be a legal entity. Even if Petitioner and his wife were a legal entity, that entity could not be an owner for purposes of filing an affidavit under MCL 211.7cc. Petitioner also argued that he was not liable for additional taxes, interest, or penalties because the new owner was not a bona fide purchaser. The Court held that the new owner was a purchaser because it acquired the property through a voluntary transaction in lieu of mortgage foreclosure. The new purchaser was a bona fide purchaser because it was not aware of the taxes at the time of purchase and the release of debt in return for the properties is considered value. The Court therefore affirmed the decision of the Tribunal.

Zenti v City of Marquette, ___ Mich App ___; ___ NW2d ___ (2019) (Docket No. 344615).

Respondent appealed the Final Opinion and Judgment of the Tribunal, which held that a conveyance from five siblings to five siblings was not a transfer of ownership that uncapped the property's taxable value. In 1996, the previous owner of the property had executed a quitclaim deed conveying the property to herself and her five children as joint tenants with full rights of survivorship. After she passed away, the five children quitclaimed the property to themselves as tenants in common. Thereafter, Respondent uncapped the property's taxable value. The Tribunal initially held that the transfer from the five children to the five children was an uncapping event because the transfer terminated the rights of survivorship and thus Petitioner gave up a present interest via a deed. On reconsideration, the Tribunal held that the transaction did "not constitute a conveyance of title to or a present interest in the property equal to the value of the fee interest" because Petitioner had only given up the right of survivorship. Respondent argued that the transaction constituted a "transfer." The Court held that the conveyance must have been to "another" person or group. Because the grantors and grantees of the deed were identical there was not a conveyance to "another" grantee. In addition,

each person involved in the transaction retained the same interest, one fifth of the property. Even if the change of rights of survivorship is considered to be an interest in the property, that interest was not conveyed to "another." Accordingly, the Court affirmed the Tribunal's Final Opinion and Judgment.

Ross Ed LLC v City of Taylor, unpublished per curiam opinion of the Court of Appeals, issued August 13, 2019 (Docket No. 344516).

Petitioner appealed the Tribunal's order granting summary disposition in Respondent's favor. Petitioner, a for-profit postsecondary educational institution, reported and paid taxes on its personal property for the 2014-2016 tax years. The Supreme Court, in *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65; 894 NW2d 535 (2017), later held that MCL 211.9(1)(a), which exempts educational institutions from personal property taxes, applied to for-profit educational institutions. Petitioner argued that it was entitled to a refund of the 2014-2016 taxes under MCL 211.53a based on mutual mistake of fact, relying on *Ford Motor Co v City of Woodhaven*, 475 Mich 425; 716 NW2d 247 (2006) and *Elltel Assoc, LLC v City of Pontiac*, 278 Mich App 588; 752 NW2d 492 (2008). The Court explained that the mistake at issue was that Petitioner reported exempted personal property as nonexempt. It further stated that, unlike in *Ford Motor Co*, there was no mistake about the amount of property owned by Petitioner, and unlike in *Elltel*, there was no mistake about whether Petitioner owned the property. Citing *Briggs Tax Serv, LLC v Detroit Pub sch*, 485 Mich 69, 81; 780 NW2d 753 (2010), the Court stated that "an unauthorized tax levy constitutes a mistake of law." Although unpublished, the Court also found persuasive the panel's reasoning in *Dorsey Sch of Business, Inc v Saginaw Charter Twp*, unpublished per curiam opinion of the Court of Appeals, issued March 19, 2019 (Docket No. 344414). which addressed the same issue. The Court concluded that there was no "mutual" mistake of fact.

Calvin Theological Seminary v City of Grand Rapids, unpublished per curiam opinion of the Court of Appeals, issued August 13, 2019 (Docket No. 343662).

Respondent appealed the Tribunal's order granting Petitioner summary disposition and concluding that its properties were exempt under MCL 211.7*o* (charitable institution exemption). The order also concluded that the subject property was not entitled to an exemption under MCL 211.7n (educational institution) or MCL 211.7s (religious society). Petitioner operated a seminary, and the properties at issue were off-campus housing units. The units were rented generally by students, and at a rate 20-25% below market rates. The housing agreements signed by occupants provided that Petitioner would maintain the properties. Maintenance staff was physically present on the properties almost every day, and some students living at the housing were employed by

Petitioner. Respondent argued that Petitioner was not a charitable institution, did not occupy the properties, and that it did not occupy the properties for the purposes for which it was incorporated. The Court held that Respondent waived a challenge to whether Petitioner was a charitable institution because it did not argue this point in the Tribunal and "Expressly declared its intent" not to pursue such a challenge. The Court held that the Tribunal's conclusion that Petitioner occupied the property was supported because Petitioner reserved a right to access the apartments and had a regular physical presence through student-employees and maintenance staff. It also held that the Tribunal's conclusion that Petitioner occupied the subject properties solely for the purposes for which it was incorporated was supported because Petitioner's purpose was to educate ministers, among other things, and that student housing was necessary to fulfill that purpose. Although the properties were not contiguous, the properties were still necessary for Petitioner to fulfill its purpose. The Tribunal did not err by granting summary disposition to Petitioner as to MCL 211.7*o*, and given this conclusion it was unnecessary to address the arguments under MCL 211.7n and 7s.

Sincerely,

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