SIXARP, LLC, d/b/a Praxis Packaging Solutions,
Petitioner,

v

Byron Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 21-000523

Presiding Judge
Victoria L. Enyart

ORDER DENYING PETITIONER'S MOTION FOR PARTIAL SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

The parties filed the respective motions for summary judgment, with respect to the issue of jurisdiction, on December 14, 2021. Petitioner's Motion seeks partial summary disposition under MCR 2.116(C)(10). Respondent's Motion seeks summary disposition under MCR 2.116(C)(4) and (C)(10). Responses to the opposing party's motions were timely filed on January 4, 2022.

The Tribunal has reviewed the Motions, responses, and the evidence submitted and finds that denying Petitioner's Motion is appropriate. Further, granting Respondent's Motion under MCR 2.116(C)(4) and denying Respondent's Motion under MCR 2.116(C)(10) is appropriate.

PETITIONER'S CONTENTIONS

In support of its Motion, Petitioner states its combined document was timely filed with Respondent's assessor and qualifies as EMPP. Petitioner contends Respondent

erred in denying the exemption and that Respondent's assessor erred in following several statutory notice requirements, including its failure to notify Petitioner of the reason for denying the exemption in writing, failure to notify Petitioner that it must file the combined document with the BOR, and failure to notify Petitioner of the due date for filing the combined document with the BOR, as well as times, dates, and location of the Board meeting. Petitioner contends Respondent's notice requirements under MCL 211.9m(3) and MCL 211.9n(3) exceed the statutory obligations for property tax assessments. Petitioner also states that Respondent's actions violated its constitutional due-process rights.

In support, Petitioner states that it engages in industrial processing at the subject real property and that the subject personal property meets the definition of EMPP. It states that Respondent's assessor denied the exemption application using a sample form and lacking specificity by listing the reason for denial as the sample reason used on the sample form. Petitioner also contends the denial failed to notify Petitioner that the combined document was to be re-filed with the BOR, the times, dates, and location of the BOR, the manner in which the BOR was to be held, and the method of submitting a protest to the BOR.

Petitioner contends that its former agent, Mr. Karsten, contacted the assessor by telephone on February 26, 2021 to advise the assessor of Petitioner's intention to appeal the denial. Petitioner contends that the assessor discouraged Petitioner from appearing at the BOR and told Petitioner instead to file a letter. Petitioner also contends the assessor failed to notify Petitioner of any deadline or its requirement to re-file the combined document. Petitioner also contends a separate agent left the

assessor a voicemail to request a hearing and for explanation of the appeal process. It states that the assessor's voicemail in response fails to indicate that re-filing the combined document was required, the time, date, or location of the meetings, or any deadline to comply. Thereafter, Petitioner states that it submitted a letter appeal with authorization letter on March 10, 2021 but was informed the following day that the BOR had adjourned, thereby depriving Petitioner of the opportunity to appeal.

Petitioner contends that Respondent's assessor failed to notify Petitioner in writing of the reason for the denial, failed to indicate that the combined document must be re-filed with the BOR, failed to notify Petitioner of the time, date, and location of the BOR, and failed to submit Petitioner's appeal to the BOR. Specifically, Petitioner argues that there are many reasons why property may not meet the definition of EMPP and that the subject denial lacks specificity. Petitioner argues this portion of the statute exists to allow Petitioner the opportunity to amend and correct its combined document and that Respondent's actions deprived it of this opportunity. Additionally, Petitioner argues that the denial notice erred in not mentioning the filing of a combined document with the BOR. Further, Petitioner contends that Respondent failed to provide pertinent information about the BOR meetings to allow the taxpayer to perfect an appeal to the BOR. Petitioner states that its appeal letter was filed within the timeframe outlined in MCL 211.30, which was the notice provided with respect to the appeal procedure in the denial letter. Finally, Petitioner contends that Respondent failed to schedule Petitioner a BOR appointment or advise the BOR that Petitioner's agents twice verbally requested to appear at the BOR.

Petitioner contends that the Tribunal has statutory jurisdiction over this appeal under MCL 205.735a because of Respondent's actions depriving Petitioner of its opportunity to appear before the BOR. Alternatively, Petitioner contends that its right to due process under the 14th Amendment to the U.S. Constitution was violated because it did not have a fair opportunity to challenge Respondent's denial and because it timely appealed the decision once the defective due-process decision was discovered. Finally, Petitioner contends that it shall demonstrate entitlement to EMPP for the subject property once the Tribunal determines it has jurisdiction.

RESPONDENT'S RESPONSE TO PETITIONER'S CONTENTIONS

In support of its response, Respondent contends that Petitioner's arguments do not conform with the plain language of statute and that Respondent contends its motion is correct that the Tribunal lacks jurisdiction.

Respondent contends that Petitioner's error caused it to miss the BOR and therefore resulted in this appeal. Respondent contends that the assessor's denial adequately advised Petitioner of the denial, the reason for the denial, and Petitioner's right to appeal that appeal to the March BOR. Respondent contends these requirements were met and that other requirements were erroneously stated by Petitioner. Respondent contends that the denial reason was sufficient because a detailed denial is not mandated by the statute and because the use of a standardized form does not render the denial ineffective.

Respondent contends that Petitioner was sufficiently advised of the need to file a protest with the BOR in the assessor's denial notice and that this notice sufficiently advised Petitioner on perfecting that appeal. Respondent contends that information

about appealing to the BOR was disseminated through multiple other channels. Respondent contends the assessor never informed Petitioner to not file a BOR appeal. Respondent claims that the reference to MCL 211.30 was sufficient to advise Petitioner of its rights before the BOR and the appropriate filing deadline.

Respondent contends that there is a clear statutory distinction, under MCL 211.9m and MCL 211.9n, between the assessor and the BOR and that a verbal protest to the assessor is not sufficient to constitute a written protest to the BOR. Respondent contends that, while the subject property does not qualify as EMPP, the Tribunal lacks jurisdiction to make such a determination.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that Petitioner owns and sought an eligible manufacturing personal property (EMPP) exemption for Parcel No. 41-50-15-020-701 for the 2021 tax year by timely filing Form 5278, the combined personal property statement and EMPP exemption application (combined document). Respondent states that the assessor denied that application in writing on February 9, 2021. The assessor denies the exemption claim because the assessor determined that the subject personal property did not meet the definition of EMPP. Respondent states that its 2021 March Board of Review (BOR) met on March 2, 8, and 9, closing on the final date, and that Petitioner did not contact the assessor about appealing to the BOR until March 10, 2021.

Respondent contends that Petitioner's failure to appeal the assessor's denial to the 2021 March BOR violates the procedural appeal requirement of MCL 211.9m and MCL 211.9n. Respondent contends that Petitioner was required to appeal the denial to

the BOR and that the Tribunal lacks jurisdiction over Petitioner's direct appeal. Respondent states that its denial notice complies with the statutory requirements of an EMPP denial notice.

Respondent contends that Petitioner's claims of inadequate notice are without merit. Respondent argues it was not statutorily required to notify Petitioner of the meeting times and dates for the BOR yet did so upon the notice of denial as well as through general publication. Respondent states it was not required to provide the location of the BOR meeting but did so. Respondent contends that Petitioner had adequate notice that it was required to appeal the assessor's denial to the BOR. Respondent contends that the assessor's denial notice adequately states the reason for denial. Respondent contends that Petitioner suffered no constitutional deprivation of a result of the denial process.

Respondent contends that there is no evidence to support Petitioner's contention that it did appeal to Respondent's BOR. Respondent contends that a verbal indication that a party seeks to appeal is not sufficient and that the written appeal must be made to the BOR. Respondent concludes that a plain reading of the statute and the facts of this case indicate that the Tribunal lacks jurisdiction to consider Petitioner's appeal.

PETITIONER'S RESPONSE TO RESPONDENT'S CONTENTIONS

In support of its response, Petitioner contends that it was deprived of the condition precedent of a BOR appeal in this case by the actions of Respondent's assessor. Specifically, Petitioner contends that the assessor failed to notify Petitioner for the reason for the denial, failed to notify Petitioner of the requirement to re-file the

exemption application with the BOR, and failed to make a BOR appointment for Petitioner despite Petitioner twice requesting such an appointment.

Petitioner contends that Respondent failed to notify it of the reason for denial in writing and failed to notify it that it was required to file a combined document with the BOR. Petitioner states that the assessor's failure to advise Petitioner of these facts deprived it of important notice prior to the BOR. In contrast to the specified denial reasoning present when an assessor denied a principal residence exemption, as demonstrated by Form 2742, or as required in the Revenue Act,[1] Petitioner contends that the assessor's subject denial does not rise to the level of specificity required by MCL 211.9m and 211.9n.

Petitioner contends that Respondent's written means failed to satisfy Respondent's statutory obligations. The Notice of Assessment indicates the method by which a taxpayer may appeal a property's value but does not reference EMPP, does not specify the reason for denial, and does not advise that the combined document must be re-filed to the BOR. Petitioner contends that public notice also was insufficient to satisfy the statutory requirements and that those notices failed to mention EMPP.

Petitioner contends that Respondent's reliance upon a sample document released by the Michigan Department of Treasury does not arise to the level of satisfying its statutory obligation. Petitioner argues that the provided language indicating that the subject does not meet the definition of EMPP does not rise to the level of specificity required by statute. Petitioner further contends that the statutory

[1] MCL 205.22. Petitioner also relies upon *Montgomery Ward & Co, Inc v Dep't of Treasury*, 191 Mich App 674 (1991) and *Winget v Dep't of Treasury*, 26 MTT 531 (2011).

burden of advising Petitioner that the combined document must be re-filed to the BOR was not met.

Petitioner further states that it attempted to schedule BOR appearance through communication with the assessor on February 26 and March 2, 2021 but that Respondent's assessor frustrated those attempts through non-communication and miscommunication.

STANDARD OF REVIEW

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.[2] In this case, Petitioner moves for partial summary disposition under MCR 2.116(C)(10), and Respondent moved for summary disposition under MCR 2.116(C)(4) and (C)(10).

Dismissal under MCR 2.116(C)(4) is appropriate when the "court lacks jurisdiction of the subject matter." When presented with a motion 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.[3] 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."[4] A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.[5]

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[2] See TTR 215.
[3] *Id.*
[4] MCR 2.116(G)(6).
[5] See *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).

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 "when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law."[6]

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.[7] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[8] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[9] Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.[10] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[11]

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[6] *Lowrey v LMPS & LMPJ, Inc,* 500 Mich. 1, 5; 890 NW2d 344 (2016) (citation omitted).
[7] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[8] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[9] *Id.*
[10] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[11] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion under MCR 2.116(C)(10) and finds that denying the Motion is warranted. Further, granting Respondent's Motion under MCR 2.116(C)(4) and denying Respondent's Motion under MCR 2.116(C)(10) is warranted.

The General Property Tax Act[12] allows for the exemption from ad valorem taxation of personal property that is qualified new or qualified previously existing personal property.[13] To claim an exemption, the party shall file the combined document with the assessor prior to February 20.[14]

MCL 211.9m(3) and MCL 211.9n(3) each states in pertinent part:

> If the assessor . . . believes that personal property for which the form claiming an exemption is timely filed . . . is not qualified . . . personal property or the form filed was incomplete, the assessor may deny that claim for exemption by notifying the person that filed the form in writing of the reason for the denial and advising the person that the denial must be appealed to the board of review under [MCL 211.30] by filing a combined document as prescribed under subsection (2).

Here, Petitioner contends that the assessor failed to appropriately notify Petitioner of the reason for denial in writing. While a written reason for denial was undisputedly provided, Petitioner claims that the stated reason is not sufficiently detailed. The denial form states the exemption request is denied because "the qualified new personal property and/or the qualified existing personal property claimed on (the

[12] MCL 211.1 *et seq.*
[13] MCL 211.9m(1), MCL 211.9n(1).
[14] MCL 211.9m(2), MCL 211.9n(2).

combined document) does not meet the definition of (EMPP) as defined by MCL 211.9m and/or MCL 211.9n, therefore the (EMPP) is denied." Petitioner correctly contends there are several components in determining whether property qualifies as EMPP, but Petitioner did not demonstrate that a more specific answer is required to comply with statute. The language, in fact, supports the opposite conclusion because it mirrors the statutory language from MCL 211.9m(3) and MCL 211.9n(3), permitting the assessor to deny the exemption request if the property is not qualified new or previously existing personal property or if the form filed was incomplete. To find that Petitioner's failure to appeal the denial to the BOR was caused by Respondent's failure to detail the reason(s) for denial in greater specificity requires a finding that the language used in the denial does not sufficiently comply with the statutory requirement to state the reason for denial in writing, but that finding is not supported here where the denial form uses the same language as the relevant statutory subsection.

Petitioner contends that it was not informed that it was required to re-file the combined document with the BOR. This claim is undisputed, yet the Tribunal finds that Petitioner was not deprived of any rights as a result. Petitioner's appeal of the assessor's denial was not considered because it was not timely filed, not because Petitioner failed to file the combined document. Petitioner therefore cannot establish that Respondent's failure to comply with this statutory requirement violated Petitioner's due-process rights.

Petitioner also contends that it was not provided by appropriate notice of the times and dates at which the BOR would meet or the manner in which the BOR would meet. The Tribunal disagrees, as this information was explicitly stated under "March

Board of Review Information" provided to Petitioner on the Notice of Assessment. Specifically, that notice indicates that the BOR will meet at certain specific times on March 8 and March 9. It is not disputed that Petitioner's written appeal was not filed with the assessor until March 10, which is outside of the statutorily required appeal period under MCL 211.9m(3) and MCL 211.9n(3). Reliance upon the general BOR dates under the General Property Tax Act is not appropriate when more specific dates were provided to Petitioner through the Notice of Assessment and the public notice process. The notice of assessment also indicates that appeals to the BOR may be made in-person, virtually, or by appeal letter, directly contradicting Petitioner's assertion that no notice was provided of the manner in which the BOR would be conducted.

Respondent's overall actions, taken as a whole, did not deprive Petitioner of any meaningful opportunity to appeal to the BOR and therefore did not deprive Petitioner of its due-process rights. No person in Michigan shall be deprived of property without due process.[15] Despite Petitioner's arguments, Respondent supplied sufficient notice regarding the reason for denial and manner of appeal. Further, its failure to notify Petitioner of the requirement to file the combined document with the BOR did not meaningfully deprive Petitioner of any rights given Petitioner's failure to timely file any written appeal of the assessor's denial.

Petitioner also contends that denying its Motion and granting Respondent's Motion is unjust because it deprives Petitioner of the opportunity to prove its case at hearing, whereas Respondent has no such limitation if Petitioner's Motion is granted. Petitioner contends that the subject property meets the definition of industrial

[15] Mich Const, Art I, § 17.

processing and should therefore qualify for the exemption. However, the Tribunal cannot consider these arguments in any case where it lacks jurisdiction. The Tribunal cannot grant any relief based on this argument because it is based in equity, and the Tribunal lacks any power to grant relief in equity.[16]

Respondent's Motion correctly contends that Petitioner was provided sufficient notice of the times and dates of the BOR. As discussed above, the Tribunal finds that Respondent's fulfillment of its responsibilities under MCL 211.24c(1) satisfies its obligation under MCL 211.9m(3) and MCL 211.9n(3). Although Respondent failed to properly advise Petitioner that it was required to re-file the combined document with the BOR, that fact is moot because the BOR's lack of jurisdiction over the assessor's denial was the result of Petitioner's failure to timely appeal the denial in writing, not its failure to re-file the combined document.

In response to Respondent's contention that no timely appeal was made, Petitioner also contends that its former agent, Mr. Karsten, spoke with Respondent's assessor by phone on or about February 26, 2021. To that end, the Notice of Assessment does indicate that a taxpayer wishing to appeal the Notice of Assessment could call that office prior to March 5. Notwithstanding, Petitioner has not shown that it was deprived of any right by the assessor's failure to take any action based upon the phone call. Petitioner states that Mr. Karsten was advised that the appeal needed to be made in writing, not verbally. That instruction comports with the plain statutory language of MCL 211.9m and MCL 211.9n. Although Petitioner contends that Mr.

[16] See *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346 (1987), *Elec Data Sys Corp v Flint Twp,* 253 Mich App 538 (2002), and *VanderWerp v Plainfield Twp*, 278 Mich App 624 (2008).

Karsten was not advised on the phone call of the time and date by which the written appeal was required to be filed, the Tribunal finds, as previously indicated, Petitioner was already advised of that information on the notice of assessment.

As a result, the undisputed facts on the record support a finding of summary disposition for Respondent under MCR 2.116(C)(4). Petitioner's failure to perfect the assessor denial at the BOR as required by statute deprives the Tribunal of any jurisdiction. As such, and because the Tribunal has no equitable power to waive or otherwise disregard a statutory requirement or filing deadline, it has no authority to grant Petitioner the relief requested.[17] Summary disposition in favor of Respondent under MCR 2.116(C)(4) is therefore appropriate. However, summary disposition in favor of Respondent under MCR 2.116(C)(10) is not appropriate because significant facts remain in dispute with respect to whether the subject property meets the definition of EMPP.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Partial Summary Disposition is DENIED under MCR 2.116(C)(10).

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is GRANTED under MCR 2.116(C)(4).

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is DENIED under MCR 2.116(C)(10).

IT IS FURTHER ORDERED that the case is DISMISSED.

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[17] See *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346 (1987), *Elec Data Sys Corp v Flint Twp,* 253 Mich App 538 (2002), and *VanderWerp v Plainfield Twp*, 278 Mich App 624 (2008).

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee

for certification is $100.00 in both the Entire Tribunal and the Small Claims Division,

unless no Small Claims fee is required.

By Victoria K. Enyart

Entered: April 12, 2022
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PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk