Marathon Petroleum Company,
Petitioner,

v

Michigan Department of Treasury,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 21-002548

Presiding Judge
Steven M. Bieda

ORDER DENYING RESPONDENT'S MOTION FOR PARTIAL SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF PETITIONER

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal disputing Respondent's June 4, 2021 recission of the Eligible Manufacturing Personal Property (EMPP) exemption for Parcel No. 47-999-00-1003-099 for the 2020 and 2021 tax years on July 1, 2021.

On December 22, 2021, Respondent filed a motion requesting that the Tribunal enter partial summary disposition in its favor. In the motion, which was filed pursuant to MCR 2.116(C)(8) and (I)(1), Respondent states that the EMPP exemption turns on a property's classification under MCL 211.34c and this case can be decided as a matter of law. Respondent requests that the Tribunal grant summary disposition in favor of Respondent for the 2020 tax year and in favor of Petitioner for the 2021 tax year based on the classification on the tax roll for each of those years.

Petitioner filed a response in opposition to the motion on January 18, 2022.[1]

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is not entitled to exemption for the 2020 tax year because MCL 211.9m limits the EMPP exemption to property that has been classified as industrial personal property under MCL 211.34c. The subject property was classified as utility personal for the 2020 and 2021 tax years, and though Petitioner successfully appealed the 2021 classification, the property remains classified as utility personal for 2020. The time for appealing the 2020 classification has passed, and the

[1] The Tribunal entered an order extending the time for Petitioner to file a response on January 10, 2022.

property is therefore not eligible for exemption under MCL 211.9m. Respondent agrees that the property is entitled to exemption for 2021 based on Petitioner's timely and successful appeal of the property's classification for that year and change in classification from utility to industrial personal.

PETITIONER'S CONTENTIONS

Petitioner contends that MCL 211.9m does not limit the exemption to property that has been classified as industrial personal property under MCL 211.34c, and it is Petitioner, not Respondent, that is entitled to summary disposition pursuant to MCR 2.116(I)(2). Respondent concedes that the subject property is entitled to exemption for 2021 based on the State Tax Commission's determination that it is correctly classified as industrial personal property for that year, and it does not dispute that this is equally true for the 2020 tax year. The Affidavit of Robert Thomas Williams confirms that the property was used as part of Petitioner's refinery for 2020, and it is therefore undeniable that the property was industrial personal property entitled to exemption for that year.

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]

A. Motions for Summary Disposition under MCR 2.116(C)(8).

Motions under MCR 2.116(C)(8) are appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." The Court of Appeals has held that:

> A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." When reviewing such a motion, a court must base its decision on the pleadings alone. In a contract-based action, however, the contract attached to the pleading is considered part of the pleading. Summary disposition is appropriate under MCR 2.116(C)(8) "if no factual development could possibly justify recovery." [3]

B. Motions for Summary Disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as

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[2] See TTR 215.
[3] *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003) (citations omitted).

a matter of law."[4] The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,[5] provided the following explanation of MCR 2.116(C)(10):

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
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> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.
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> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
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> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[6]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[7] In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary judgment."[8] "Instead, the court's task is to review the record evidence, and all

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[4] *Id*.
[5] *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).
[6] *Id*. at 361-363. (Citations omitted.)
[7] *West v General Motors Corp*, 469 Mich 177 (2003).
[8] *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 1 (1994).

reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial."[9]

C. Motions for Summary Disposition under MCR 2.116(I)(1).

MCR 2.116(I)(1) states: "If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay."[10]

D. Motions for Summary Disposition under MCR 2.116(I)(2).

MCR 2.116(I)(2) states: "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment as a matter of law."[11] Thus, under this rule the court may render judgment in favor of the opposing party.

CONCLUSIONS OF LAW

The Tribunal has considered Respondent's Motion for Summary Disposition under the criteria for MCR 2.116(C)(8) and (I)(1) and finds that granting the motion is not warranted. The Tribunal notes in that regard that despite citing MCR 2.116(C)(8) and the corresponding standards of review, which test the legal sufficiency of the complaint, Respondent does not address the petition filed in this matter or the factual allegations set forth therein anywhere in its motion. Based on the arguments made and Respondent's supplemental reliance on MCR 2.116(I)(1), it appears to the Tribunal that the motion is actually grounded in MCR 2.116(C)(10), and the purported absence of any genuine issues of material fact regarding the property's entitlement to exemption for each of the tax years at issue. For the reasons set forth below, the Tribunal agrees that there are no genuine issues of material fact, but it is Petitioner, not Respondent, that is entitled to summary disposition pursuant to MCR 2.116(I)(2).

MCL 2119m states, in pertinent part, that "qualified new personal property for which an exemption has been properly claimed under subsection (2) is exempt from the collection of taxes under this act."[12] "Qualified new personal property" is defined as property that is both "eligible manufacturing personal property" and "new personal property."[13] "New personal property" is defined as "property that was initially placed in service in this state or outside of this state after December 31, 2012 or that was construction in progress on or after December 31, 2012 that had not been placed in service in this state or outside of this state before 2013,"[14] and "eligible manufacturing personal property" is defined as "all personal property located on occupied real property if that personal property is

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[9] *Id.*
[10] *Id*.
[11] See also *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000).
[12] MCL 211.9m(1).
[13] MCL 211.9m(6)(j).
[14] MCL 211.9m(6)(f).

predominantly used in industrial processing or direct integrated support."[15] Respondent does not dispute that the subject personal property is "located on occupied real property" or "predominantly used in industrial processing or direct integrated support" within the meaning of the statute—the sole basis of its denial and the instant motion is the property's classification as utility personal. Respondent relies on MCL 211.9m(6)(c), which states, in relevant part, that "utility personal property as described in section 34c(3)(e) . . . [is] not eligible manufacturing personal property." Petitioner disputes Respondent's interpretation of the language, presenting a question of law and statutory interpretation. As noted by the Michigan Supreme Court,

> An overarching rule of statutory construction is that this Court must enforce clear and unambiguous statutory provisions as written. If the language of [a] statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. However, what is 'plain and unambiguous' often depends on one's frame of reference. In order to ascertain this frame of reference, the contested provisions must be read in relation to the statute as a whole and work in mutual agreement.
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> Additionally, the frame of reference shares a deep nexus with the intent of the Legislature. The primary goal of statutory interpretation is to give effect to the intent of the Legislature. Fundamentally, this task begins by examining the language of the statute itself. The words of a statute provide the most reliable evidence of [the Legislature's] intent . . . . This Court must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. As far as possible, effect should be given to every phrase, clause, and word in the statute. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended.[16]

The Court has also held that "when the Legislature uses different words, the words are generally intended to connote different meanings. Simply put, 'the use of different terms within similar statutes generally implies that different meanings were intended.' "[17] Petitioner aptly notes that the Michigan Legislature has tied the definition of property for exemption and credit purposes to its classification under MCL 211.34c on multiple occasions by defining it as property "classified" under that section. This includes the statute at issue in *Walter Toebe Const Co v Dep't of Treasury*,[18] which is cited and relied upon by Respondent. The Court noted in that case that

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[15] MCL 211.9m(6)(c).
[16] *United States Fid & Guar Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1, 12–13; 795 NW2d 101, 107–08 (2009) (citations and quotations omitted).
[17] *Id*. at 14. (citation omitted).
[18] *Walter Toebe Const Co v Dep't of Treasury*, 289 Mich App 659; 810 NW2d 128 (2010).

> Many sections of the SBTA imported definitions from other statutes. For example, the SBTA defined a 'United States corporation' with reference to the Internal Revenue Code, specifically 26 U.S.C. § 7701(a)(3) and (4), by using the words 'as those terms are defined in,' rather than 'classified as.' Similarly, the act defined 'insurance company' with reference to section 106 of the Insurance Code, MCL 500.106, again with the words 'as defined in,' not 'classified as.' Throughout the act, 'as defined in' or 'as defined by' were the phrases used to denote an adoption of a statutory definition from another statute . . . . Significantly, the word 'classified' was never used for this purpose.
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> It follows, then, that if the Legislature, in drafting the SBTA, had wished to import the definition of 'industrial personal property' from the GPTA, it would have chosen to say, as it did throughout the SBTA, 'Industrial personal property' means that term as defined in section 34c of the general property tax act,' or something similar. Instead, the Legislature chose to define 'industrial personal property' as 'personal property *classified* as industrial personal property *under* section 34c of the general property tax act . . . .' Section 34c of the GPTA contains not only a definition of 'industrial personal property,' but also imposes on assessors a duty to classify property under that section. The most reasonable inference to be drawn from the Legislature's use of this language is that it intended to allow respondent to rely on the assessor's classification of property under MCL 211.34c(1) and did not intend to require respondent to make an independent assessment of whether taxpayers' property met the definition in MCL 211.34c(3).[19]

In line with this reasoning, the Tribunal finds that the Legislature would have chosen to exclude property "classified as" utility personal under section 34c(3)(e) from the definition of Eligible Manufacturing Personal Property if it intended the assessor's classification under MCL 211.34c(1) to be dispositive. Instead, it chose to refer to "utility personal property *as described in* section 34c(3)(e) . . . ."[20] Thus, unlike *Walter Toebe Const Co,* the most reasonable inference to be drawn from the instant language is that the Legislature intended to require an independent assessment of whether the property meets the definition in MCL 211.34c(3)(e). This is supported by the fact that the primary definition of "eligible manufacturing personal property" requires only that it be "predominantly used in industrial processing or direct integrated support."[21] It is also supported by the State Tax Commission's Assessor Guide to Eligible Manufacturing Personal Property Tax Exemption and ESA, which states that "the classification of the property is not a determining factor in eligibility for the exemption . . . ."[22] Although these guidelines do not have the force of law, "agency interpretations are granted

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[19] *Id*. at 661-662.
[20] MCL 211.9m(6)(c) (emphasis added).
[21] MCL 211.9m(6)(c).
[22] *<https://www.michigan.gov/documents/treasury/Assessor_Guide_to_PPT_Exemptions_101016_538412_7.pdf> (accessed April 14, 2022).*

'respectful consideration,' and if persuasive, should not be overruled without 'cogent reasons.'"[23] Respondent's arguments to the contrary are relatively tenuous, and the Tribunal therefore finds no such reasons in this case.

Respondent argues that after a classification decision is made, MCL 211.34c also describes the relevant classifications–industrial, residential, agricultural, commercial, utility, etc.–for purposes of MCL 211.9m. Respondent also cites *Wexford Medical Group v Cadillac*,[24] for the proposition that tax exemptions must be narrowly construed. The Tribunal finds, however, that Respondent impermissibly reads into the statute a provision that is not included in its plain language. Moreover, "tax exception statutes are generally construed narrowly in favor of the taxing authority . . . ; however, these principles do not allow a strained construction of a statute that is adverse to the Legislature's intent."[25] Indeed, the Supreme Court recently clarified that "because the canon requiring strict construction of tax exemptions does not help reveal the semantic content of a statute, it is a canon of last resort. That is, courts should employ it only "'when an act's language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity.' "[26] *As in Walter Toebe Const Co,* the Tribunal is bound "to give effect to the Legislature's intent." [27] Because it is clear from reading MCL 211.9m that the Legislature did not intend to make the definition of "eligible manufacturing personal property" dependent on the assessor's classification, the Tribunal finds that Petitioner is entitled to judgement as a matter of law. Therefore,

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

IT IS FURTHER ORDERED that Summary Disposition in Favor of Petitioner is GRANTED

IT IS FURTHER ORDERED that Respondent's June 4, 2021 Eligible Manufacturing Personal Property Exemption-Order of Rescission for the 2020 and 2021 tax years are VACATED.

IT IS FURTHER ORDERED that if prior payment has been refunded, the Michigan Department of Treasury shall issue an Essential Services Assessment (ESA) Statement within 28 days of entry of this Order.

IT IS FURTHER ORDERED that if prior payment has been refunded, the taxpayer shall electronically pay the ESA liability, without interest, within 35 days of issuance of the

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[23] *CMS Energy Corp v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued October 15, 2013 (Docket No. 309172) at 4. See also *In re Complaint of Rovas against SBC Mich*, 482 Mich 90, 117-118; 754 NW2d 259 (2008).
[24] *Wexford Medical Group v Cadillac*, 474 Mich 192 (2006).
[25] See *Kalanquin v Michigan Twp of Richfield*, unpublished opinion *per curiam* of the Court of Appeals, issued May 19, 2011 (Docket No. 297342) citing *Moshier v Whitewater Twp,* 277 Mich App 403, 409; 745 NW2d 523 (2007).
[26] *TOMRA of N Am, Inc v Dep't of Treasury*, 505 Mich 333, 343 (2020) (citations omitted).
[27] *Walter Toebe Const Co*, 289 Mich App at 662.

ESA Statement. Failure to pay the full ESA liability shall result in the rescission of the Eligible Manufacturing Personal Property exemption by the Department of Treasury as required by statute.[28]

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[29] 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 within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, and (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%.

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

[28] See MCL 211.1057(5) and MCL 211.1077(5).
[29] See MCL 205.755.

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 

Date Entered by Tribunal: April 15, 2022

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