Gestamp Washtenaw LLC,
Petitioner,

v

Michigan Department of Treasury,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 21-003865

Presiding Judge
Jason C. Grinnell

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

This case involves the issue of whether Petitioner complied with the statutory requirements of the Eligible Manufacturing Personal Property (EMPP) exemption by making timely payment of its Essential Services Assessment (ESA) for the 2020 tax year. The Tribunal issued a Scheduling Order on February 16, 2022, indicating that the filing deadlines for motions for summary disposition in the above-captioned case was August 19, 2022. Each party filed a Motion for Summary Disposition on that date, and each party filed a response opposing the respective parties' motions on September 9, 2022.

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

PETITIONER'S CONTENTIONS

In support of its Motion, Petitioner contends that payment of its essential services assessment was timely and Respondent's recission of its EMPP exemption was improper based on MCL 8.6, which provides in relevant part the following:

> If the last day of any period or a fixed or final day is a Saturday, Sunday, or legal holiday, the period or day is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

The State Essential Services Assessment Act[1] (ESA Act) states that payment of the essential services assessment levied for that year shall be paid "not later than August 15". It is undisputed that August 15, 2020, fell on a Saturday, and Petitioner made full payment of its essential services assessment on Monday, August 17, 2020, the first day after August 15, 2020, that was not a Saturday, Sunday, or legal holiday. However, Respondent assessed penalties based on its conclusion that Petitioner's payment was untimely and later rescinded Petitioner's exemption.

RESPONDENT'S RESPONSE TO PETITIONER'S CONTENTIONS

Respondent contends that Petitioner's motion must be denied because the phrase "not later than" must be given effect in the context of the statutory scheme as a whole. Here, the context of the statute is the assessment of property taxes and within that scheme, "the Legislature knew how to include provisions that extended due dates." "That the legislature opted not to include this extension in MCL 211.1057(3) signals its intent that no extension applies." "Further, the concerns addressed by MCL 8.6 are not present in the context of ESA because it is administered electronically." Respondent argues that taxpayers are required to pay their ESA assessments electronically and the

[1] MCL 211.1051, *et seq*.

electronic portal is available at any time, including Saturdays. Following the failure of Petitioner to submit its payment by April 15, 2021, Respondent was required to rescind the exemption under MCL 211.1057.

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner failed to comply with the statutory requirements for a 2020 EMPP exemption as it did not timely pay its ESA assessment, including interest and penalty. Respondent was then statutorily required to rescind the exemption. "The [l]egislature intended that deadlines in the context of personal property tax assessment be treated different than other statutory deadlines, and Petitioner failed to meet the statutory deadline for payment of the ESA."

"MCL 211.1057(3) unambiguously provides that a taxpayer must make its ESA payment 'not later than' August 15." This deadline must be read "in light of the overall statutory scheme".[2] "In the context of the assessment of personal property, the [l]egislature has signaled its intent that dates are absolute absent a clear exception." For instance, in MCL 211.19(2), MCL 211.9(n), 211.9(o), and 211.9(p) the legislature explicitly provided that if the deadline "is a Saturday, Sunday, or legal holiday the claim must be filed not later than the next day that is not a Saturday, Sunday, or legal holiday." Read in context with the statutory scheme for assessing personal property, the legislature's omission of the extension language in MCL 211.1057(3) indicates that it intended that any ESA payments made after August 15 are untimely. There is no dispute that Petitioner did not make its payment until August 17, 2020, which was untimely under MCL 211.1057(3). Petitioner had nearly eight months to pay its full ESA

[2] *Honigman Miller Schwartz & Cohn LLP v Detroit*, 505 Mich 284, 307 (2020).

liability before Respondent was forced to rescind the exemption, but Petitioner failed to do so.

PETITIONER'S RESPONSE TO RESPONDENT'S CONTENTIONS

Petitioner contends that Respondent's reliance on certain deadlines involving personal property, where the legislature provided the deadline with its own carry over, does not compel the conclusion that the August 15 deadline for ESA cannot carry over. Regardless of the legislature providing a specific carry over provision for specific events, the legislature was silent about the August 15 deadline. Without a specific statement from the legislature that the August 15 deadline does not carry over, the legislature's general provision under MCL 8.6, must apply. If it did not, the Tribunal would be failing to give effect to MCL 8.6's plain and unambiguous language, which confirms that MCL 8.6 applies to "the statutes" without exception, and to "any period" that has a "fixed" or "final" day on a Saturday. Respondent agrees that Petitioner made its ESA payment on August 17, 2020. Therefore, Petitioner's payment was timely as a matter of law under MCL 8.6. Accordingly, late penalties are irrelevant and Respondent's decision to rescind Petitioner's EMPP exemption should be reversed.

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.[3] In this case, Petitioner and Respondent each move for summary disposition under MCR 2.116(C)(10).

[3] See TTR 215.

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 if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.[4]

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.[5] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[6] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[7] 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.[8] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[9]

CONCLUSIONS OF LAW

The Tribunal has carefully considered the parties' motions and responses under MCR 2.116 (C)(10) and finds that granting Petitioner's Motion and denying

[4] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).
[5] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[6] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[7] *Id.*
[8] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[9] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

Respondent's motion is warranted.

The Tribunal finds that there is no genuine issue of material fact that Petitioner submitted its ESA payment on August 17, 2020, and that such payment is considered timely in accordance with MCL 8.6. The Tribunal does not find Respondent's argument that the legislature intended the deadline in MCL 211.1057 to be treated differently than other statutory deadlines persuasive. Respondent's reading of the statute "in light of the overall statutory scheme" compares two entirely different statutes, the General Property Tax Act (GPTA) and the ESA Act. Because the legislature included specific carry over language in parts of the GPTA, it is not automatically assumed that because that language was not included in the ESA Act, that its omission was intentional. As the ESA Act is silent on the issue of dates carrying over, we look to the plain and unambiguous language of MCL 8.6 as it applies "to the statutes". The Tribunal agrees with Petitioner that exempting the ESA Act's August 15 deadline from MCL 8.6's general provision would ignore MCL 8.6's plain and unambiguous language. When the plain and ordinary language of a statute is unambiguous, the legislature's intent is clear and judicial construction is neither necessary nor permitted. Rather, the statute must be enforced as written.[10] Michigan courts have long recognized that specific statutory provisions apply in their specific contexts, but otherwise the general statutory provisions will control.[11] In this case, the general statutory provision of MCL 8.6 provides that a fixed deadline, that falls on a Saturday, carries over to the next day that is not a Saturday, Sunday, or legal holiday. Further, the Michigan Attorney General has stated that "[t]he purpose of MCL

[10] *Moshier v Whitewater Twp,* 277 Mich App 403; 745 NW2d 523 (2007).
[11] *Cyrus v Calhoun County Sheriff*, 85 Mich App 397, 400 (1978).

8.6, was obviously to protect the rights of persons to take action on the last day of a statutory or administrative rule period."[12] The Tribunal agrees with Petitioner that the "not later than" provision in the statute merely establishes a deadline but does not preclude the application of MCL 8.6 as Respondent suggests. While the ESA is administered electronically as Respondent indicates, this issue also does not preclude the application of the unambiguous language of MCL 8.6 to MCL 211.1057 in this case. As Petitioner's payment of its ESA was timely, Respondent's late payment penalty and subsequent rescission of its EMPP was not proper under MCL 211.1057(5)(a).

JUDGMENT

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

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

IT IS FURTHER ORDERED that Respondent shall reverse its rescission of Petitioner's 2020 EMPP exemption and shall issue a refund to Petitioner in the amount of $3,224.64, which represents the late payment penalty assessed and previously paid by Petitioner.

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.

[12] AG opinion; 1987-1988 Mich OAG No. 6480, 1987 WL 283991

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

Entered: November 4, 2022
ssm/jcg

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