



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Butler Properties I LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 24-001156

Michigan Department of Treasury,
Respondent.

Presiding Judge
Michael R. Bannasch

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On April 9, 2025, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor in this case. More specifically, Respondent requests summary disposition under MCR 2.116(C)(10), arguing that there are no factual issues in dispute, that Petitioner did not make a timely flow-through entity (FTE) tax election for 2022, and that it is entitled to judgment as a matter of law.

Petitioner did not file a response to the motion.

The Tribunal has reviewed the motion and the evidence submitted and concludes that granting Respondent's Motion for Summary Disposition is warranted.

RESPONDENT'S CONTENTIONS

In support of its motion, Respondent contends that MCL 206.813 requires an FTE that desires to be subject to the FTE tax¹ to make a timely election in a form and manner as prescribed by Respondent. For tax year 2022, for an FTE that had not made an FTE tax election beginning with tax year 2021, the election must be made by March 15, 2022. The form and manner for making the election was to submit an electronic payment through Michigan Treasury Online (MTO), as prescribed by Respondent in its January 14, 2022 Notice Regarding the Implementation of the Michigan Flow-Through Entity Tax.

Petitioner did not make any FTE tax payments under its own name for 2022. While Respondent honored Petitioner's request to transfer estimated payments from a related entity to Petitioner's account, none of the transferred payments were made by March 15, 2022. Thus, they cannot count as a timely FTE tax election for 2022, and Respondent is correct to void the 2022 FTE tax return filed by Petitioner.

¹ MCL 206.801 to 206.847.

Finally, Petitioner's request that it be granted an FTE election for 2022 due to "the unusual circumstances in this case," must be denied. Petitioner provides no legal basis for the argument that a taxpayer's specific circumstances should be considered for the validity of an election, and the statute does not have any provision for a waiver or modification of the FTE tax election deadline. Petitioner is ultimately making a request that is equitable in nature, and the Tribunal lacks authority to provide equitable relief.

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, Respondent moves 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 a matter of law." The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,³ 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.

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.

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).

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

² TTR 201(5).

³ *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).

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.⁴

“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.”⁵ 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.”⁶ “Instead, the court’s task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial.”⁷

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent’s motion under MCR 2.116(C)(10) and concludes that granting the motion is warranted.

The facts of this case are clear and undisputed. Petitioner is an FTE partially owned, in relevant part, by The John Wm. Butler Trust UAD October 31, 1983. With the passage of Michigan’s FTE tax law in late 2021,⁸ Petitioner and its owners wanted to utilize this law to obtain federal income tax benefits. Due to a misunderstanding of the law, the payment made via MTO on March 14, 2022, intended as an FTE tax election for 2021 through 2023, was made by the Trust instead of by Petitioner.

On March 22, 2023, Respondent notified the Trust that it was not an entity eligible to make an FTE tax election,⁹ but that, because of tax implementation issues, the 2021 FTE tax return filed by the Trust was processed as a one-time exception. In response, Petitioner’s representative contacted Respondent by phone and letter dated June 6, 2023, requesting that estimated payments made by the Trust for 2022 FTE tax be moved to Petitioner’s account. The payments requested to be moved had been made by the Trust on June 14, 2022, November 22, 2022, and January 3, 2023. Petitioner’s representative also requested that the 2021 FTE tax election for the Trust be applied to Petitioner.

⁴ *Id.* at 361-363. (Citations omitted.)

⁵ *West v General Motors Corp*, 469 Mich 177 (2003).

⁶ *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 153 (1994).

⁷ *Id.*

⁸ 2021 PA 135, signed into law December 20, 2021, effective for tax years beginning on or after January 1, 2021.

⁹ MCL 206.805(3) defines a “flow-through entity” to be an entity that is treated as an S corporation or a partnership under the internal revenue code. A trust is not an FTE for Michigan FTE tax purposes, even though certain trusts have tax characteristics similar to FTEs.

On August 1, 2023, Respondent notified Petitioner that it had moved the 2022 estimated payments as requested, but that it was unable to move the payment applied to 2021 because that payment had already been utilized for the 2021 FTE tax return filed by the Trust that Respondent had processed as a one-time exception. Respondent's letter did not specifically address Petitioner's request that the 2021 FTE tax election for the Trust be applied to Petitioner.

Although Petitioner refers to these facts as "unusual circumstances,"¹⁰ Respondent is correct that there is no legal basis for considering Petitioner to have made an FTE tax election applicable to 2022 on the basis of these facts. MCL 206.813 allows an FTE to make an FTE tax election. Even if one were to strain to read the statute to mean that FTE #1 could make an election for FTE #2, the fact remains that the Trust is not an FTE under the definition at MCL 206.805(3). Therefore, it is clear not only that Petitioner did not make a payment as an FTE tax election for 2022, but also that the payment by the Trust for 2021 could not be considered an FTE tax election for Petitioner.

Perhaps the most unusual circumstances of this case are Respondent's actions, but even these do not form a legal basis for considering Petitioner to have made an FTE tax election applicable to 2022. Although not explained beyond the phrase "because of tax implementation issues,"¹¹ Respondent accepted the Trust's 2021 FTE tax return. This appears to have caused Petitioner to believe that a valid election existed for the Trust. Then, based on conversation between Petitioner's representative and Respondent, Petitioner believed that election could be moved from the Trust to Petitioner, hence the written request to do so on June 6, 2023. Finally, based on Respondent's August 1, 2023 response to this request, which confirmed the transfer of the 2022 estimated payments but was silent about the issue of a transfer of the election itself, Petitioner believed the election must have been transferred to it because otherwise the transfer of the payments would make no sense.

Unfortunately, two (or more) wrongs don't make a right. Respondent's actions of accepting the 2021 FTE tax return for the Trust, transferring the 2022 estimated payments from the Trust to Petitioner, and not explicitly replying to Petitioner's request to transfer the election may have caused confusion for Petitioner, and they may not even be directly supported by statute. But there is nothing in the law that makes it so that these actions must result in Petitioner being considered to have a valid FTE tax election for 2022. To the contrary, as Respondent points out, there is no provision in Part 4 of the Income Tax Act of 1967¹² that permits for waiver or modification of the statutory election deadline or for a valid election after the deadline. Petitioner did not make an FTE election applicable to 2022 by the March 15, 2022 deadline.

¹⁰ Petition at 9.

¹¹ Respondent's Motion for Summary Disposition at Exhibit 1.

¹² MCL 206.801 to 206.847.

Ultimately, because Petitioner does not point to an interpretation of statute to support its position, Petitioner's arguments are ones of equity, and the Tribunal does not have powers of equity.¹³ Because the Tribunal's powers are limited to those authorized by statute, the Tribunal concludes it has no authority to waive the FTE tax election deadline set forth in MCL 206.813. As a result, Respondent's Motion for Summary Disposition is granted and its determinations are affirmed.

JUDGMENT

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

IT IS FURTHER ORDERED that Respondent's determination that Petitioner did not make a valid FTE tax election for 2022 is AFFIRMED.

IT IS FURTHER ORDERED that Respondent's determination to void Petitioner's 2022 FTE return is AFFIRMED.

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

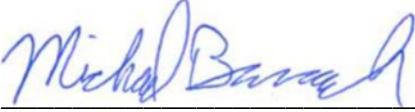
APPEAL RIGHTS

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 or disabled veterans 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.

¹³ See *Electronic Data Sys. Corp. v. Twp. of Flint*, 253 Mich. App. 538; 656 NW2d 215 (2002).

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By  _____

Entered: May 15, 2025
mrh

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 provided by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk