

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Taylor Entrance Systems,
Petitioner,

v

MTT Docket No. 16-005575

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Marcus Abood

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER
MCR 2.116(C)(10)

FINAL OPINION AND JUDGMENT

On February 21, 2017, Respondent filed a Motion for Summary Disposition arguing that: (i) “[w]hile [Petitioner] timely filed its Form 5278 with the local assessor, it failed to create and certify its ESA annual return, and failed to pay its ESA liability by October 15, 2016 despite prior notice from Treasury,” (ii) “[a]s required by MCL 211.1057(5)(a), Treasury rescinded [Petitioner’s] EMPP Exemptions on November 23, 2016,” (iii) “[Petitioner] appears to allege the notice provided by Treasury regarding [its] ESA obligations was defective,” (iv) “[Respondent] sent all written correspondence to the sole address [Petitioner] provided on its Form 5278 as the primary taxpayer address and certified as true and accurate,” and (v) “the attached notices and other documentary evidence, accompanied with the affidavit of David A Buick, establish there is no genuine issue of material fact that [Petitioner] failed to pay the ESA tax in time despite prior notice, and [Respondent’s] rescission . . . was proper.”

Petitioner did not file a response to the Motion.

The Tribunal has considered the Motion and the case file and finds that Respondent moves for summary disposition under MCR 2.116(C)(10). 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.¹ In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.²

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.³ The moving party bears the initial burden of supporting its

¹ See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

² See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

³ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

position by presenting its documentary evidence for the court to consider.⁴ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.⁵ 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.⁶ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.⁷

Respondent's Motion under MCR 2.116(C)(10) shall be granted as there are no genuine issues of material fact. The State Essential Services Assessment Act ("SESA") unambiguously sets forth the qualification requirements and provides no equitable relief for claimants who fail to certify the statement or fail to make full payment of the assessment, including the late penalty payment, if required. Further, the Tribunal has no "equitable powers" to waive or otherwise extend the deadlines set forth in the SESA.⁸ Petitioner failed to meet the timeframes required by MCL 211.1057. Petitioner contends that it failed to meet the deadlines given that the notice was not sent to its corporate office in Wisconsin.

The Tribunal has reviewed the pleadings and documents submitted and finds that Petitioner's Form 5278 clearly lists under "Taxpayer Information" the address of "631 N Third St, West Branch, MI 48661." Further, Respondent has submitted the affidavit of David A. Buick which states that a payment reminder was emailed on July 15, 2016 and a second payment reminder was mailed to the Third St address on July 22, 2016. The affidavit further indicates that on August 24, 2016, a "Notice of Account Status" was mailed to the Third St address and on October 21, 2016, the Notice of Intent to Rescind was mailed to the Third St address. None of the mailings were returned as undeliverable per the affidavit. The affidavit also states that Respondent's first notice of any issue with the address utilized was November 10, 2016, through a phone call from Petitioner. Here, the Tribunal finds that Respondent has supported its position that proper notice of payment due was made to Petitioner at the address utilized on Form 5278. Petitioner did not file a response to the motion and has not set forth specific facts showing that there is a genuine issue of material fact remaining. Here, all evidence on record demonstrates that the payment reminder and Notice of Account Status were properly mailed to Petitioner, per the address certified on Form 5278. Although it appears the Order of Rescission was sent to the improper address, (1st St, rather than Third St), the Tribunal finds that everything on record indicates that Petitioner was provided with proper notice of the payment requirements under MCL 211.1057 and Petitioner still failed to make full payment of the assessment, and thus, the rescission was properly entered. Despite the final Order of Rescission being sent to the wrong address, Petitioner was able to timely file its Petition with the Tribunal and Petitioner is not prejudiced by this minor error.

⁴ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

⁵ *Id.*

⁶ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

⁷ See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

⁸ See *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 547-548 (2002).

The Tribunal finds that Respondent properly issued the Order of Rescission in light of the facts outlined above. As such, Respondent has proven it is entitled to summary disposition, in its favor, under MCR 2.116(C)(10) and the Orders of Rescission shall be upheld. Therefore,

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

IT IS FURTHER ORDERED that the November 23, 2016 Order of Rescission for the subject properties are UPHELD.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the revocation of the exemption and the property's assessment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.⁹ 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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%.

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.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.¹⁰ 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

⁹ See MCL 205.755.

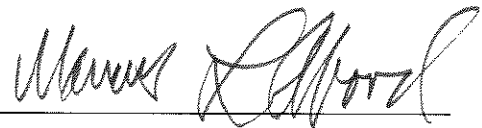
¹⁰ See TTR 261 and 257.

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.¹¹ A copy of the motion must be served 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.¹² Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹³

A claim of appeal must be filed 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."¹⁴ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.¹⁵ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹⁶

Entered: MAR 31 2017
krb

By: _____



¹¹ See TTR 217 and 267.

¹² See TTR 261 and 225.

¹³ See TTR 261 and 257.

¹⁴ See MCL 205.753 and MCR 7.204.

¹⁵ See TTR 213.

¹⁶ See TTR 217 and 267.