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

Exodus Place,
Petitioner,

v

MTT Docket No. 457527

City of Grand Rapids,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING JOINT MOTION TO EXTEND

ORDER DENYING PETITIONER'S MOTION FOR LEAVE TO FILE REPLY BRIEF

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

ORDER GRANTING RESPONDENT SUMMARY DISPOSITION UNDER MCR 2.116(I)(2)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On July 8, 2014, Petitioner filed a motion requesting that the Tribunal enter summary judgment in its favor and grant it exemption from ad valorem property taxation under MCL 211.7o and MCL 211.53b for the 2012 tax year. In the Motion, which was filed pursuant to TTR 215, TTR 225 and MCR 2.116(C)(10), Petitioner contends that there is no genuine issue of material fact relative to the exemption status of the subject property for the tax year at issue, and as such, it is entitled to judgment as a matter of law.

On July 25, 2014, the parties filed a joint motion requesting that the Tribunal grant Respondent an additional ten days to file a response to Petitioner's Motion for Summary Disposition.[1] In the Motion, the parties state that Respondent has experienced staffing changes in recent weeks, resulting in a minor and temporary backlog of responses due, making it difficult to respond to Petitioner's Motion for Summary Disposition within the 28 days provided for by TTR 215, TTR 225, and MCR 2.116(C)(10). Further, "[t]he parties agree that for the process to result in a truly informed and meaningful decision, [they] need time to adequately consider and brief the issues."

[1] The parties failed to include the fee required for the filing of the Motion with their initial submission. As a result, the Tribunal issued a notice indicating that it would not consider the Motion (i.e., take no action) unless the required filing fee was paid within 21 days of the Notice's July 31, 2014 entry. The parties submitted the required payment in the amount of $50.00 on August 8, 2014.

On August 8, 2014, Respondent filed a response to Petitioner's Motion for Summary Disposition. In the response, Respondent does not dispute that Petitioner meets the requirements set forth in MCL 211.7o, but rather challenges its request for exemption under MCL 211.53b. Respondent contends that under the facts of this case, MCL 211.53b does not grant it or the Tribunal authority to retroactively grant Petitioner an exemption for the 2012 tax year. Respondent contends that the issue is one of jurisdiction, and as such, it is not Petitioner, but Respondent that is entitled to judgment as a matter of law pursuant to MCR 2.116(I)(2).

On August 25, 2014, Petitioner filed a motion requesting that the Tribunal grant it leave to file a reply brief. In the motion, Petitioner states that the reply brief addresses factual issues raised by Respondent in its response to Petitioner's Motion for Summary Disposition, and so will enable the Tribunal to reach a just decision.

BACKGROUND

Respondent received the first of three property tax exemption applications from Petitioner on July 3, 2012. Because the section of the application indicating the year for which Petitioner was requesting an exemption was left blank, Respondent mailed Petitioner a letter on July 5, 2012, asking for clarification. On July 18, 2012, Respondent sent Petitioner a letter indicating that its application had been denied. The stated reason for denial was that Respondent had no authority to grant exempt status to the 2009 assessment roll.

Respondent received the second property tax exemption application from Petitioner on December 14, 2012. The section of the application indicating the year for which Petitioner was requesting an exemption was again left blank. However, a letter received on December 13, 2012, stated:

> Enclosed is our application for being tax exempt from property taxes, 2009 and 2010 tax returns and also a letter that I sent last year requesting we become taxed [sic] exempt for 2012. We will be filing 2011 tax returns by March 2013.
>
> We were told that because we had a balance that we did not qualify to be taxed exempt in 2012. I would like to appeal our 2012 property taxes and have Exodus Place exempt.
>
> If you could let me know what we need to do further to insure our exempt status it would greatly be appreciated.

On February 4, 2013, Respondent sent Petitioner a letter indicating that its application had been denied. The stated reason for denial was that the application was made under section 211.7d, and the exemption did not apply. Petitioner appealed the February 4, 2013 denial to the March Board of Review, and following the Board's denial, filed an appeal with the Tribunal on May 29, 2013. On March 20, 2014, the parties, in MTT Docket No. 454465, stipulated to exempt status and entry of a consent judgment for the 2013 tax year. The Consent Judgment was entered by the Tribunal on April 24, 2014.

On July 5, 2013, Petitioner filed an appeal with the July 2013 Board of Review for the 2012 tax year under MCL 211.53b. The Board refused to hear the appeal. The stated reason for this refusal was lack of a qualified error. In response, Petitioner filed this appeal with the Tribunal on August 1, 2013.

Respondent received the third property tax exemption application, requesting exemption for tax year 2014, from Petitioner on February 26, 2014. The exemption was approved by the Board of Review on March 21, 2014.

PETITIONER'S CONTENTIONS

Petitioner contends that Respondent incorrectly assessed the subject property as taxable for the 2012 tax year, and that this is a qualified error correctable by the July Board of Review under MCL 211.53b.[2] Respondent concedes that Petitioner has used the subject property for charitable purposes since it began occupying the property in 2009, and Petitioner communicated with Respondent on several occasions to discuss its desire to apply for tax-exempt status for the 2012 tax year. Respondent was fully cognizant that the subject property qualified for the charitable institution exemption, yet assessed the property as taxable. Accordingly, there was "an error regarding the correct taxable status of the property being assessed," resulting in a "qualified error" under MCL 211.53b(10)(f). Moreover, when Respondent incorrectly determined that the property was taxable, there was a "clerical error . . . regarding the rate of taxation." In that regard, Petitioner cites *Bridgewater Interiors v City of Detroit*, unpublished opinion of the Court of Appeals, issued November 25, 2003 (Docket No. 241136) and *Broadcasting Partners, Inc v City of Oak Park*, unpublished opinion of the Court of Appeals, issued April 18, 1997 (Docket No. 18117) for the proposition that clerical errors relative to the correct rate of taxation under MCL 211.53b(10)(a) include circumstances in which an assessor improperly taxes property at its ad valorem rate rather than at a reduced rate or fails to carry the property on the tax rolls as exempt. Petitioner contends that Respondent, like the City of Detroit in *Bridgewater Interiors*, "mistakenly failed to indicate on its tax rolls" that Petitioner was not subject to taxation. Because Respondent incorrectly determined the correct taxable status of the subject property, or made a clerical error regarding the rate of taxation applicable to the subject property, a qualified error occurred under MCL 211.53b. Further, the State Tax Commission has indicated that "an error regarding the correct taxable status" under MCL 211.53b(10)(f) includes a situation in which "[a] charitable non-profit corporation that qualified for exemption under MCL 211.7o sent a letter with proper documentation to the assessor and requested exemption [and the] assessor failed to grant the exemption." STC Bulletin 5 of 2006, issued April 10, 2006. Petitioner also cites *Mengeling v City of Brighton*, 16 MTTR 238 (Docket No. 329879, July 27, 2007), wherein

[2] Petitioner claims exemption pursuant to MCL 211.7o. Petitioner states that it is a nonprofit charitable institution operating in the City of Grand Rapids. It was incorporated to help those in need by providing "a facility for men coming out of homelessness, prison, and difficult life circumstances." Though it serves only men, Petitioner does not discriminate in any way among the men that it serves. It provides "low rent, transitional housing, low-cost meals, job training, mentoring, and job finding assistance, all in a Christian context . . . ." In providing housing and meals, Petitioner does not charge more than is necessary to maintain its operations, and if an individual cannot afford to pay, housing and meal services are provided at no charge. Transition and recovery services are always provided free of charge. These include: GED and literacy classes; job training and employment assistance; medical, prescription drug and mental health services; Alcoholic and Narcotic Anonymous meetings, plus additional recovery counseling; and daily devotions and Christian counseling with an on-staff Pastor.

the Tribunal held that MCL 211.53b allows for retroactive correction of errors not based on when the taxpayer "should have discovered the error," but instead merely on whether an error exists, and notes that similar to the parties in that case, the parties here do not dispute the status of the subject property as tax-exempt. Petitioner contends that as such, it is entitled to judgment as a matter of law pursuant to MCR 2.116(C)(10).

RESPONDENT'S CONTENTIONS

Respondent does not dispute that Petitioner is a charitable nonprofit organization that currently qualifies for exemption from ad valorem property taxation under MCL 211.7o. It contends, however, that to receive an exemption for the 2012 tax year, Petitioner was required to file an application for exemption with the assessor's office no later than the second Monday in March of that year. See MCL 211.30. Petitioner failed to do so, and as such, Respondent committed no error "regarding the correct taxable status of the real property being assessed" within the meaning of MCL 211.53b(10)(f). Respondent argues that the scenario set forth in STC Bulletin 5 of 2006 undoubtedly assumes that the taxpayer sent its application in a timely manner and invoked the correct section of the General Property Tax Act, and the cases upon which Petitioner relies are inapposite. In *Bridgewater Interiors v City of Detroit*, unpublished opinion of the Court of Appeals, issued November 25, 2003 (Docket No. 241136), the city actually made an error by failing to assess the property at the Renaissance Zone tax rate. Here, Petitioner is the one who missed the deadline repeatedly, and then invoked an inapplicable section of the General Property Tax Act for its exemption request. These were not mistakes or errors by the City. *Broadcasting Partners, Inc v City of Oak Park*, unpublished opinion of the Court of Appeals, issued April 18, 1997 (Docket No. 18117) stands only for the proposition that MCL 211.54 (a statute with no applicability to the facts of the instant appeal) provides an avenue for relief where the taxable status of a property has been incorrectly recorded, and *Mengeling v City of Brighton*, 16 MTTR 238 (Docket No. 329879, July 27, 2007) is distinguishable in that the city had represented to the taxpayer that its property would be exempt, but then assessed it as taxable for the 2006 tax year. Further, the latter is an unpublished decision of the Tribunal, provided without any of the exhibits or other evidence that formed the basis for the Tribunal Judge's reasoning. Finally, Respondent contends that even if it had committed a qualified error, which it did not, MCL 211.53b does not extend back to the 2012 tax year. As such, it is not Petitioner, but Respondent that is entitled to judgment as a matter of law pursuant to MCR 2.116(I)(2).

APPLICABLE LAW

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. See TTR 215. In this case, Petitioner moves for summary disposition under MCR 2.116(C)(10).

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

MCR 2.116(C)(10) provides for summary disposition when "[e]xcept as to the amount of damages, 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, 451 Mich 358; 547 NW2d 314 (1996), 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 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. *Id*. at 361-363. (Citations omitted.)

In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

CONCLUSIONS OF LAW

The Tribunal has considered the Joint Motion to Extend and finds that the parties have, for the reasons set forth therein, shown good cause to justify the granting of the Motion. Petitioner has failed, however, to show good cause to justify the granting of its Motion for Leave to File a Reply Brief. Petitioner states that the reply brief addresses factual issues raised by Respondent in its response to Petitioner’s Motion for Summary Disposition, and so will enable the Tribunal to reach a just decision. However, the brief merely summarizes and restates the legal positions of the parties and the facts set forth in the Affidavit of Robert Munger, which was submitted with its Motion for Summary Disposition. Finally, having given careful consideration to Petitioner’s

Motion for Summary Disposition and Respondent's response to that motion under the criteria for MCR 2.116(C)(10), and based on the pleadings, affidavits and other documentary evidence provided, the Tribunal finds that granting the motion is not warranted. Although the Tribunal finds that there is no genuine issue of material fact, it is Respondent, and not Petitioner, that is entitled to judgment as a matter of law pursuant to MCR 2.116(I)(2).

Respondent does not contest the fact that Petitioner is a charitable nonprofit organization that currently qualifies for exemption from ad valorem property taxation under MCL 211.7o. Respondent, by its own terms, does not take issue with Petitioner's ownership, the nature of its services, or the extent or purpose for which the property is occupied. Thus, as presented by the parties, the sole question presented for consideration by this Tribunal is whether Respondent's July 2013 Board of Review, and consequently, the Tribunal, have authority under MCL 211.53b to grant Petitioner an exemption for the 2012 tax year.

Petitioner cites a number of cases in support of its Motion for Summary Disposition. The Tribunal finds, however, that with the exception of *Mengeling v City of Brighton*, 16 MTTR 238 (Docket No. 329879, July 27, 2007), Petitioner's reliance on these cases is misplaced. Both *Bridgewater Interiors v City of Detroit*, unpublished opinion per curiam of the Court of Appeals, issued November 25, 2003 (Docket No. 241136) and *Broadcasting Partners, Inc v City of Oak Park*, unpublished opinion per curiam of the Court of Appeals, issued April 18, 1997 (Docket No. 181517) are unpublished opinions, and "[a]n unpublished opinion [of the Court of Appeals] is not precedentially binding under the rule of stare decisis." MCR 7.215(C)(1). Though such decisions may be considered instructive or persuasive authority, see *In re Application of Indiana Michigan Power Co,* 275 Mich App 369, 380, 738 NW2d 289 (2007), both cases precede the 2006 amendment that expanded MCL 211.53b to include the specific section at issue in this appeal. Even assuming arguendo that either should be considered persuasive, the Tribunal notes, as did Respondent, that the analysis in *Broadcasting Partners* arose out of MCL 211.154, which deals with incorrect reporting or omission of property liable to taxation and the State Tax Commission's authority to correct the same. Further, "[c]ourts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory." *Koontz v Ameritech Services, Inc,* 466 Mich 304, 312, 645 NW2d 34 (2002). Clearly, the Legislature intended the terms set forth in subsections (10)(a) and (10)(f) to have different meanings, otherwise the 2006 amendment would have been unnecessary and subsection (10)(f) would be mere surplusage. See *Liberty Hill Hous Corp v City of Livonia*, 480 Mich 44, 57-58; 746 NW2d 282, 290 (2008). Accordingly, Petitioner's contention that an error regarding the taxable status of a property under MCL 211.53b(10)(f) is also a "clerical error . . . regarding the rate of taxation" under MCL 211.53b(10)(a) is not supported.

As for *Mengeling*, the Tribunal finds no merit in Respondent's argument regarding the precedential nature of this case. The decision was issued for publication following its entry in 2007, and thus was designated precedential by the Tribunal. See MCL 205.765. It is reported in the Michigan Tax Tribunal Reporter as such, and the fact that the opinion is not accompanied by any of the exhibits or other evidence does not in any way affect its precedence as Respondent contends. Nevertheless, Respondent is correct that the facts of *Mengeling* are distinguishable from the instant appeal. The taxpayer in that case failed to appear before the March 2006 Board of Review to assert its exemption claim, and the City of Brighton, much like Respondent in the

instant appeal, claimed that his "lone opportunity to present evidence and argue the basis for an exemption was at the March [B]oard of [R]eview and, if dissatisfied with that board of review's determination, to make a timely appeal to the Tribunal." *Id*. Brighton argued that "'the July and December boards of review are not held so that a petitioner can contest an assessment or debate the merits of whether or not an exemption exists a second time.'" *Id*. The Tribunal, noting that there was no dispute regarding the appropriate taxable status of the property, held that "[m]uch like its statutory counterparts, MCL 211.53a and MCL 211.154, the statutory relief in MCL 211.53b provides a limited retroactive period in which to correct specified errors. These errors would otherwise be subject to appeal only for the current tax year and would be required to have been raised through the procedure normally applicable to property tax appeals . . . . The relief in 53b extends a 'back door' to 'the year in which the error was made or in the following year.'" *Id*. Notably, however, the taxpayer in *Mengeling* had filed a claim of exemption with the March Board of Review in the year prior, and was denied due to the fact that he was not an owner of the property as of December 31, 2004, the relevant tax date for the 2005 tax year. "The Board's denial stated, 'Bishop Carl F. Mengeling did not own and occupy property by December 31, 2004, tax date in the State of Michigan. *Exemption is not effective until 2006 tax year*.'" *Id*. Further, "Petitioner spoke with Respondent's assessor on May 9, 2005 and summarized its understanding of the conversation in a letter to the assessor dated May 10, 2005. The letter stated in pertinent part, 'it is our understanding that the occupancy of St. Patrick Church in the referenced property now qualifies the property for exemption in 2006.'" *Id*. Following the city's subsequent assessment of the property as taxable, "Petitioner consulted the City's new assessor regarding the property's tax status and was advised, by letter dated July 25, 2006, that Petitioner should have pursued its appeal to the 2006 March Board of Review and that, having failed to take this action, the 'opportunity to officially challenge' the tax bill has passed.'" *Id*. Accordingly, in *Mengeling*, the city not only had notice that the property qualified as exempt prior to issuing the 2006 assessment, but also represented to Petitioner that it was entitled to and would receive the exemption in 2006. Thus, as contended by Respondent, the city in *Mengeling* committed an actual error by taxing property that was previously determined to be entitled to exemption. Alternatively, it could be argued that it erred by representing to the taxpayer that it was would automatically receive an exemption for the 2006 tax year, thus effectively denying it an opportunity to timely request an exemption.

In contrast, there is nothing in the instant record indicating that Respondent had notice that the subject property qualified as exempt prior to issuing the 2012 assessment. While it is clear that Petitioner had been communicating with Respondent's office since 2011 regarding applying for an obtaining an exemption, there is no indication that documentation establishing eligibility had been provided. Petitioner did not officially submit an application for exemption until July 2012, and even assuming arguendo that Petitioner was requesting an exemption for the 2012 tax year with that application, its request was untimely.[3] As noted by Respondent, taxpayers are required to file an application for exemption with the local taxing authority no later than the second Monday in March of the tax year at issue to receive an exemption. See MCL 211.30(1), which provides that "the board of review shall meet on the second Monday in March." See also MCL

---

[3] There appears to be some dispute between the parties as to the year for which Petitioner was requesting an exemption. The Affidavit of Marcy Rupinski indicates that Petitioner informed Respondent's office that it was seeking exemption for 2009, while the Affidavit of Robert Munger indicates that Petitioner was seeking exemption for the 2012 tax year.

211.53b, which provides that "[t]he board of review meeting in July and December shall meet only for the purpose described in subsection (1), and to hear appeals provided for in sections 7u, 7cc, 7ee, 7jj, 9m, 9n, and 9o." *Id*. The only exception is for real or personal property classified as commercial, industrial or developmental, which can be appealed directly to the Tribunal without a protest to the Board of Review. See MCL 205.735a. This did not occur here, and though Petitioner claims that Respondent never informed it of any deadline for filing, Respondent took no affirmative action that prohibited it in any way from timely requesting an exemption, as did the city in *Mengeling*. As such, Respondent did not, and could not have erred in assessing the property as taxable for that year.[4]

JUDGMENT

Given the above, the Tribunal finds that the pleadings and evidence before it do not establish a "qualified error" within the meaning of MCL 211.53b(10)(f), and Respondent is entitled to judgment as a matter of law under MCR 2.116(I)(2). As a result:

The property's TCV, SEV and TV as established by the Board of Review for the tax years at issue are as follows:

Parcel Number: 41-13-25-378-005

Year	TCV	SEV	TV
2012	$1,797,200	$898,600	$898,600

The property's final TCV, SEV and TV for the tax years at issue are as follows:

Parcel Number: 41-13-25-378-005

Year	TCV	SEV	TV
2012	$1,797,200	$898,600	$898,600

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the parties' Joint Motion to Extend is GRANTED.

IT IS FURTHER ORDERED that Petitioner's Motion for Leave to File Reply Brief is DENIED.

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

---

[4] The Tribunal notes that Respondent argued that even if it had committed such an error, MCL 211.53b would not extend relief back to the 2012 tax year. However, as noted in Respondent's brief, "MCL 211.53b(1) specifically provides that '[e]xcept as otherwise provided in subsections (6) and (8) and section 27a(4), a correction under this subsection may be made for the current year and the immediately preceding year only." Accordingly, had Respondent committed an error regarding the correct taxable status of the subject property in the immediately preceding 2012 tax year within the meaning of MCL 211.53b(10)(f), the July 2013 Board of Review, pursuant to the clear and unambiguous language of the statute, would have had authority to correct said error.

IT IS FURTHER ORDERED that Respondent is GRANTED Summary Disposition Under MCR 2.116(I)(2).

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 property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. 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, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through December 31, 2014, at the rate of 4.25%.

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

Entered: Oct 1, 2014 By: Steven H. Lasher
ejg