STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Completion House, Inc.,
Petitioner,

v

MTT Docket No. 409346

City of Pontiac,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S MOTION REQUESTING LEAVE TO AMEND PETITION

ORDER OF DISMISSAL

INTRODUCTION

On July 9, 2010, Petitioner, Completion House, Inc., filed this appeal requesting that the Tribunal grant a charitable use exemption to the property at issue. Petitioner filed this Petition in response to the denial of exemption status letter issued by the Oakland County Equalization Department, dated September 30, 2009. The letter denied an exemption status for the property because the guidelines of MCL 211.7o and 211.7r were not met. On July 30, 2010, Respondent filed a Motion for Summary Disposition requesting that the Tribunal dismiss the above-captioned case pursuant to MCR 2.116(C)(4). On August 13, 2010, Petitioner filed a Response to the Motion for Summary Disposition indicating that jurisdiction was proper because of timely filing the Petition and meeting the procedural requirements. The Tribunal finds that it lacks jurisdiction for both the 2009 and 2010 tax years based on Petitioner's failure to timely file an appeal within 35 days of the denial notice.

BACKGROUND

Petitioner owns the subject property, and purportedly uses the property for charitable uses, such as residential and program services to individuals with a disability who have a history of substance abuse but are in active recovery from addiction. Petitioner has previously obtained tax-exempt status at the federal level from income taxes. Petitioner currently seeks a charitable-use exemption from property taxes on the subject property. Petitioner filed an application with the Respondent seeking the charitable use exemption for the property, and was subsequently denied the exemption. Petitioner filed this appeal with the Tribunal contending that Respondent erroneously denied it the charitable use exemption according to MCL 211.7o, based upon its ownership of the subject property, its current nonprofit status, and the services it provides on the property.

RESPONDENT'S CONTENTIONS

Respondent contends that the Tribunal lacks jurisdiction over Petitioner's appeal because Petitioner failed to timely appeal to the Board of Review for the year at issue. Respondent claims the Petition filed with the Tribunal was not properly filed after an appeal to the Board of Review, as required by MCL 205.735a, and that the Tribunal's jurisdiction is not proper. Respondent contends that pursuant to MCL 205.735a(3):

> Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6).

Respondent further contends that there are some property classifications that do not require an appeal to the Board of Review under MCL 205.735a(4)(a), but that residential property is not among those properties. Respondent explains that "residential property still must be protested

before the Board of Review before the Tribunal can acquire jurisdiction under the statute, the failure to do so is fatal to a Petition seeking such review." (Respondent's Motion, p 4).

In support of its contentions, Respondent cites to *Parkview Memorial Ass'n v Livonia*, 183 Mich App 116, 118; 454 NW2d 169 (1991), which holds that "[u]nless the classification of the property is specifically excused from the Board of Review protest requirement, the failure to lodge such a protest prevents the Tribunal from acquiring jurisdiction over the dispute." (Respondent's Motion, p 4). Respondent asserts that because an appeal was not brought before the local Board of Review, the Tribunal lacks jurisdiction over the Petition and it must be dismissed.

In the alternative, Respondent contends that Petitioner has run out of time to file a Petition with the Tribunal. Respondent contends that under MCL 205.735a(6), Petitioner is granted 35 days from a final decision, ruling, or determination to make an appeal to the Tribunal. MCL 205.735a(6) states that:

> The jurisdiction of the tribunal in an assessment dispute as to property classified . . . as agricultural real property, residential real property, timber-cutover real property, or agricultural personal property is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved. In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination.

Respondent states that Petitioner applied for the exemption on August 18, 2009 and was denied the exemption on September 20, 2009, and that the time to invoke the Tribunal's jurisdiction had already expired when the Petition was filed.

Respondent contends that Petitioner should not be allowed to amend its Petition because it does not change the fact that no protest was made to either the 2009 or the 2010 Board of Review. Respondent asserts that Petitioner has confused the appeal to the Board of Review with

the application for exemption, and that this is not an appropriate basis to determine jurisdiction of the Tribunal. Secondly, Respondent contends that the Petition was not timely filed for the 2009 and 2010 tax years as it was filed on July 31, 2010. Respondent relies upon MCL 205.735a in support of this contention, which, as stated above, indicates that the Petition must be filed by July 31 of the tax year involved. In further support of its contentions, Respondent asserts that even if the 35-day provision on MCL 205.735a(6) were applicable, Petitioner still did not timely file its Petition. Finally, Respondent contends that a substantial error occurred in failing to include allegations for the 2009 tax year, and that this is more than a clerical error that can be amended. Respondent asserts that allowing such an amendment would expand the Tribunal's subject matter jurisdiction to include matters over which the Tribunal clearly lacks jurisdiction and would be an abuse of the doctrine of excusable neglect as set forth in *Nicholson v City of Warren*, 467 F3d 525, 527 (6 CA 2006).

PETITIONER'S CONTENTIONS

Petitioner contends that the Petition was properly filed with the Tribunal upon a decision from the board of review. Petitioner contends that "[t]he Oakland County Equalization Office acted as the Board of Review for the City of Pontiac. Petition[er] satisfied the jurisdictional requirements by filing an appeal with the Oakland County Equalization Office and then appealing to this Tribunal."

Petitioner contends the Tribunal has proper jurisdiction to determine the exemption status of the property at issue. Petitioner asserts:

> MCL 205.735a(6) states that the "jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as . . . residential real property . . . is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year invoked."

> The Tribunal's jurisdiction is clearly invoked under MCL 205.735a(6). Petitioner received a denial from the Board of Review on September 20, 2009, for tax year 2009. Respondent's allegation that "there was no protest to the local Board of Review" is wrong. Petitioner filed its protest with the Board of Review on or about August 18, 2009. Petition[er] filed its Petition for Property Tax Exemption before July 31, 2010, to appeal the denial of its request for a property tax exemption.
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> MCL 205.735a(6) is inapplicable to this case. That section states that "in all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination.["] Here, Petitioner seeks an exemption, which is clearly an assessment dispute. MCL 205.735a(3) states that an assessment dispute includes disputes "as to the valuation or exemption of property." Only "other matters" invoke the provisions of MCL 205.735a(6). The letter from the Oakland County Equalization Office signed by Tracy Jones is not a "final determination, ruling, or determination." That letter specifically directs the Petitioner to "appeal to the Michigan Tax Tribunal for a further determination of this matter" in the event the Petitioner disagreed with the determination. Because the issue before the Tribunal is an assessment dispute and not an "other" matter, the 35 day deadline in which to file the appeal to the tax tribunal is inapplicable.

Additionally, Petitioner contends that pursuant to MCL 205.737(5)(a), the subsequent tax year, 2010, is automatically included. MCL 205.737(5)(a) states that it is not necessary to file a motion to amend to include subsequent tax years "[i]f the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition."

Petitioner further contends that the clerical error in omitting the taxable, assessed, and state equalized value from the Petition is not a basis for dismissal. Petitioner, in a separate motion, seeks leave from the Tribunal to amend its petition. Petitioner contends that it is clear from its Petition that the tax year 2009 is the year from which the appeal was taken. Further, Petitioner cites to MCL 205.735a(9) and Tax Tribunal Rule 205.1135, which allow a petition or answer to be amended with the Tribunal's permission for clerical mistakes upon motion or the Tribunal's initiative. Petitioner also contends that "[l]eave to amend must be granted unless the

Court makes specific findings that justice would not be served by granting the amendment. *Board of Education for the Taylor School District v Taylor Federation of Teachers,* 66 Mich App 695; 239 NW2d 713 (1976)."

FINDINGS OF FACT

Petitioner, a nonprofit corporation, owns Parcel Number 64-14-28-301-003, located in Pontiac, Michigan. Petitioner purports to use the property for charitable uses, such as residential and program services to individuals with a disability who have a history of substance abuse but are in active recovery from addiction. On or about August 18, 2009, Petitioner filed an application for Exemption of Real Estate for the 2009 tax year, seeking a charitable use property tax exemption under MCL 211.7o. Respondent issued a letter of denial of the property tax exemption. The letter of denial indicated that Petitioner failed to meet the requirements of MCL 211.7o and 211.7r for a charitable use exemption.

Petitioner filed its Petition with the Tribunal on July 9, 2010. Petitioner indicates that its use of the property is for a charitable use, and that because of how it is structured, what it provides to persons, and how it does so, it should qualify for a charitable use exemption under MCL 211.7o. With its Petition, Petitioner submitted evidence that show its tax bills, denial of the charitable use exemption, and other tax-exempt organization paperwork.

On July 30, 2010, Respondent filed a Motion for Summary Disposition stating the Tribunal lacks jurisdiction over this matter. Petitioner filed Petitioner's Response to Respondent's Motion for Summary Disposition on August 13, 2010. Simultaneously, Petitioner filed Petitioner's Motion Requesting Leave to Amend Petition pursuant to MCR 2.118(a)(2) and

MCL 205.735a(9). Respondent filed its Response to Petitioner's Motion Requesting Leave to Amend Petition on August 24, 2010.

APPLICABLE LAW

Respondent moves for summary disposition pursuant to MCR 2.116(C)(4). This Court Rule states that a Motion for Summary Disposition is appropriate where the ". . . court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). When presented with a Motion for Summary Disposition pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties. MCR 2.116(G)(5). In addition, the evidence offered in support of or in opposition to a party's motion will only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion. MCR 2.116(G)(6). A Motion for Summary Disposition pursuant to MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43; 620 NW2d 546 (2000). Furthermore:

> A motion under MCR 2.116(C)(4), alleging that the court lacks subject matter jurisdiction, raises an issue of law. The issue of subject matter jurisdiction may be raised at any time, even for the first time on appeal. *McCleese v Todd*, 232 Mich App 623, 627; 591 NW2d 375 (1998) ("Lack of subject matter jurisdiction may be raised at any time."); *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997) ("Although the jurisdictional issue here was never resolved by the trial court, a challenge to subject-matter jurisdiction may be raised at any time, even for the first time on appeal."). When a court lacks jurisdiction over the subject matter, any action it takes, other than to dismiss the case, is absolutely void. *McCleese*, 232 Mich App at 628; 591 NW2d at 377. The trial court's determination will be reviewed de novo by the appellate court to determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether affidavits and other proofs show that there was no genuine issue of material fact. *See Cork v Applebee's of Michigan, Inc*, 239 Mich App 311; 608 NW2d 62 (2000) ("When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or

> whether the affidavits and other proofs show that there was no genuine issue of material fact."); *Walker v Johnson & Johnson Vision Products, Inc*, 217 Mich App 705; 552 NW2d 679 (1996); *Faulkner v Flowers*, 206 Mich App 562; 522 NW2d 700 (1994); *Department of Natural Resources v Holloway Construction Co*, 191 Mich App 704; 478 NW2d 677 (1991). 1 Longhofer, Michigan Court Rules Practice § 2116.12, p 246A.

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion for Summary Disposition under the criteria for MCR 2.116(C)(4), and based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting Respondent's Motion is appropriate.

The requisite steps to properly invoke the jurisdiction of the Tribunal are explicitly enumerated by statute in MCL 205.735a(3) and MCL 205.735a(6) for residential real property. To obtain jurisdiction under MCL 205.735a(6), the requirements of MCL 205.735a(3) must first be satisfied. MCL 205.735a(3) states:

> Except as otherwise provided in this section or by law, for an assessment dispute as to the **valuation or exemption** of property, the assessment **must** be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6). (Emphasis added).

In addition to the statutory authority, TTR 313 states: "[f]or an assessment dispute as to the valuation or exemption of property classified as . . . residential real property . . . the property's assessment must be protested before the local board of review unless otherwise excused by law." Here, the evidence suggests Petitioner failed to properly protest to Pontiac's Board of Review. Instead, Petitioner is appealing from a denial letter issued by the Oakland County Equalization Department that was in response to its initial application for a tax exemption based upon its purported charitable use of the subject property.

Petitioner incorrectly relies on MCL 205.735a(6) to support its contention that it had until July 31 to file a Petition. In fact, MCL 205.735a(6) states:

> The jurisdiction of the tribunal in an assessment dispute as to property classified . . . as . . . residential real property is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved. In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination.

Here, Petitioner is appealing the denial of a tax exemption. The final decision denying Petitioner's request was issued by the Oakland County Equalization Department on September 30, 2009. Pursuant to MCL 205.735a(6), to properly invoke the Tribunal's jurisdiction, Petitioner was required to ". . . fil[e] a written petition within 35 days after the final decision, ruling, or determination." Petitioner failed to file its Petition within 35 days of Oakland County Equalization's denial letter. Therefore, the Tribunal lacks jurisdiction over this appeal and dismissal of the appeal is appropriate.

The Tribunal notes that Petitioner's Motion to Amend is improper as the Petition was never properly pending before the Tribunal. Regardless of whether the Petition was appealing the 2009 or 2010 tax year, the Tribunal lacks jurisdiction over this matter based on Petitioner's failure to timely file a petition, pursuant to MCL 205.735a. Therefore, the Tribunal denies Petitioner's Motion to Amend.

For the reasons stated above, the Tribunal grants Respondent's Motion for Summary Disposition under MCR 2.116(C)(4).

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(4) is GRANTED.

IT IS FURTHER ORDERED that Petitioner's Motion Requesting Leave to Amend Petition is DENIED.

IT IS FURTHER ORDERED that this case is DISMISSED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: January 14, 2011 By: Kimbal R Smith III