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

Manistee County Road Commission,
Petitioner,
v MTT Docket No. 390451

Township of Maple Grove,
Respondent. Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

ORDER ASSIGNING SEPARATE PARCEL NUMBER

I. PROCEDURAL HISTORY

Petitioner, Manistee County Road Commission, is a body corporate subdivision of the State of Michigan. The parcel at issue is improved commercial real property used primarily by Petitioner in furtherance of its road and street maintenance duties. However, one of the buildings located on the subject parcel is leased to an individual for private purposes. Petitioner protested to the 2010 March Board of Review prior to filing the instant appeal on May 19, 2010.

Respondent has not filed an answer to the petition.

On September 3, 2010, the parties filed a Joint Counsel Conference Summary.

On November 30, 2010, Petitioner filed a Motion for Summary Disposition, supporting brief, supporting affidavit, property record card and 2010 Board of Review minutes. Petitioner moves pursuant to MCR 2.116(C)(10) and states that there is no genuine issue as to any material fact and Petitioner is entitled to judgment as a matter of law.

Respondent has not filed a response to Petitioner's Motion.

II. PETITIONER'S CONTENTIONS

Petitioner contends the subject property, "identified as 51-38-028-125-06, is government owned, tax exempt property and the leased portion (one building out of four located on this parcel) should be assessed to the lessee of the building pursuant to MCL 211.181." Petitioner contends that the buildings include "a road salt shed, a barrel roof building, an equipment garage and office and a general garage type structure." The first three buildings, Petitioner contends, are used solely by Petitioner "for the public purpose of maintaining the streets and roads in Manistee County in pursuance of its statutory function." The fourth building is "leased to Mr. Tom Watt and is used for private purposes."

Petitioner contends that, as shown on the submitted property record card, "no value is being assigned to the land [by Respondent], but only that building which is leased to the private entity." Petitioner further contends that, for the 2010 tax year, "Respondent assessed the parcel to Petitioner in the amount of $157,800, which, as indicated represents only the value of the building being leased by Petitioner to the private entity." Further, "taxes based on this assessment were levied against Petitioner." Petitioner's 2010 March Board of Review protest was based on its contention "that Respondent should have assessed the taxable portion of the parcel (i.e., the leased building) to the lessee rather than the Petitioner."

In support of its position, Petitioner cites MCL 211.7m in stating that "property that is owned by an agency or commission which is wholly owned by a political subdivision of a governmental unit that is used for a public purpose is tax exempt." Petitioner also cites MCL 211.181 which states that "if tax exempt property is leased, loaned or used by a private individual 'the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.'" Petitioner contends that it is a subdivision of a governmental unit, it owns the subject property and uses it for a public purpose, and therefore, "the parcel is generally exempt from ad valorem real property taxes . . . ." Petitioner contends that, based on these facts and the "plain and unambiguous terms" of MCL 211.181 "the lessee should be responsible for the taxes as though he were the owner of the parcel," rather than Respondent.

Petitioner further contends that Respondent, in "just assessing to the government agency that portion of the exempt parcel being leased to the private entity results in Respondent violating the spirit, if not the letter, of MCL 211.2 and MCL 211.27a."

Petitioner contends that these statutory sections "require a valuation of 'all land . . . all buildings and fixtures on the land, and all appurtenances to the land, except as expressly exempted by law.'" Petitioner contends that, "to avoid assessing Petitioner for real property that is properly tax exempt, Respondent has to twist its assessment into a pretzel that results in value being assigned only to the leased building."

Petitioner contends that it protested "before the local Board of Review and the board held petitioner responsible for the property taxes in the event the lessee was unable to pay." Petitioner contends that Respondent "seems to confuse 'assessing' the non-exempt portion of the parcel to the lessee with simply sending the tax bill to the lessee. Petitioner does not seek merely to have the tax bill sent to the lessee, but to have the non-exempt portion of the parcel assessed to the lessee."

III. FINDINGS OF FACT

Based on a review of the Motions, Affidavits, and case file, the Tribunal finds the following:

1. The Manistee County Road Commission (Petitioner) is a subdivision of the State of Michigan charged with the maintenance of public roads and streets within its jurisdiction.
2. The subject property is known as parcel no. 51-38-028-125-06 and is located within Respondent's taxing jurisdiction.
3. The subject property is classified as commercial real property and includes four buildings.
4. Petitioner, in furtherance of its public duties, uses three of the buildings for storage of materials and equipment.
5. The fourth building is not used by Petitioner but, instead, is leased to a private, for profit entity or individual.
6. Respondent issued an assessment for the improvements used by the for profit entity to Petitioner.

IV. APPLICABLE LAW

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10), which provides the following grounds upon which a summary disposition motion may be

based: "Except 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." There is no specific tribunal rule governing motions for summary disposition. As such, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such a motion. TTR 111(4).

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.
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> 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.
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> 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).
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> 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.)

The general requirements for the assessment of real property are found in MCL 211.3, which provides, in pertinent part:

> Real property shall be assessed in the township or place where situated, to the owner if known, *and also* to the occupant, if any; if the owner be not known and there be an occupant, then to such occupant, *and either or both shall be liable for the taxes on said property*, and if there be no owner or occupant known, then as unknown. A trustee, guardian, executor, administrator, assignee or agent, having control or possession of real property, may be treated as the owner. (Emphasis added.)

MCL 211.24 provides that:

> (1) On or before the first Monday in March in each year, the assessor shall make and complete an assessment roll, upon which he or she shall set down all of the following:
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> (a) The name and address of every person liable to be taxed in the local tax collecting unit with a full description of all the real property liable to be taxed. If the name of the owner or occupant of any tract or parcel of real property is known, the assessor shall enter the name and address of the owner or occupant opposite to the description of the property. If unknown, the real property described upon the roll shall be assessed as "owner unknown". All contiguous subdivisions of any section that are owned by 1 person, firm, corporation, or other legal entity and all unimproved lots in any block that are contiguous and owned by 1 person, firm, corporation, or other legal entity shall be assessed as 1 parcel, unless demand in writing is made by the owner or occupant to have each subdivision of the section or each lot assessed separately.

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> (g) Property assessed to a person other than the owner shall be assessed separately from the owner's property and shall show in what capacity it is assessed to that person, whether as agent, guardian, or otherwise. Two or more persons not being copartners, owning personal property in common, may each be assessed severally for each person's portion. Undivided interests in lands owned by tenants in common, or joint tenants not being copartners, may be assessed to the owners.

MCL 211.7m provides an exemption for certain real property owned and used by political subdivisions of the state, and provides, in pertinent part:

> Property owned by . . . a county, township, city, village, or school district used for public purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act.

However, that exemption is limited by MCL 211.191, which provides, in pertinent part:

> If an assessing officer finds that any real property . . . that for any reason is exempt from taxation under the laws of this state is not being used for the purposes for which the tax exemption is granted, the assessing officer shall place the property on the tax rolls and the property shall be subject to taxation in the same amount to the same extent as though it had not been exempt from taxation.

In addition, real property owned by a political subdivision of the state and made available to a private user for profit is covered by MCL 211.181(1), which provides that:

> Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

MCL 211.182 provides that:

> (1) Taxes levied under this act shall be assessed to the lessees or users of real property and shall be collected at the same time and in the same manner as taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.
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> (2) Taxes levied under this act shall not become a lien against the property.
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> (3) When due, taxes levied under this act shall constitute a debt due from the lessee or user to the township, city, village, county, and school district for which the taxes were assessed.
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> (4) Delinquent taxes levied under this act shall be collected at the same time and in the same manner as taxes levied on personal property are collected under sections 46 and 47(2) of the general property tax act, 1893 PA 206, MCL 211.46 and 211.47.

V. ANALYSIS AND CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's motion under MCR 2.116(C)(10). Petitioner's Motion for Summary Disposition is supported by the facts and applicable statutory and case law. That is, Petitioner has shown that the subject property should be assessed to the lessee/user rather than Petitioner.

This case deals with the assessment of real property owned by a political subdivision of the state but made available, in part, to a private for profit individual or entity. The taxable status of the property is not in question. Rather, Petitioner asserts that the taxable portion of the property it owns, specifically one building of

the four located on the subject parcels, should be assessed separately to the occupant/lessee *instead of,* rather than simultaneously, to Petitioner. Given the facts of this case the Tribunal agrees.

Under MCL 211.181, property otherwise exempt from ad valorem taxation for any reason, but used or leased by a for profit entity, is taxable to the user "in the same amount and to the same extent as if the lessee or user owned the real property." Michigan's Court's have held on numerous occasion that this statute is clear in that the lessee is liable for a "lessee-user tax act" and is "designed toward equality in the sharing of burdens and benefits of local government" and "does not act to discriminate against lessees for profit of exempt property and commendably operates to prevent shocking discrimination in their favor." *Township of Muskegon v Continental Motors Corporation,* 346 Mich 218 at 225-26; 77 NW2d 799 (1956). In essence, the statute "seeks to eliminate the unfair advantage that private-sector users of tax-exempt property would otherwise brandish over their competitors who lease property that is privately owned." *Golf Concepts v City of Rochester Hills,* 217 Mich App 21, 25; 550 NW2d 803 (1996) citing *Seymour v Dalton Twp,* 177 Mich App 403, 410; 442 NW2d 655 (1989).

However, on its face this statute does not settle the question Petitioner raises. Specifically, the statute does not require that the lessee-user be taxed in place of the owner, or instead of the owner, or to the exclusion of the owner. Rather, the statute requires that the lessee-user be assessed as if and to the same extent as the owner. Further clouding the analysis is MCL 211.3 which requires that real property be assessed "to the owner if known, *and also to the occupant,* if any . . . and either or both shall be liable for the taxes on said property." (Emphasis added.) MCL 211.3 clearly recognizes the assessment of the real property to two parties, even simultaneously.

In this case the subject property – being one building used by a private for profit entity – would not be exempt pursuant to MCL 211.7m as it is not used in furtherance of Petitioner's stated public purpose. Therefore, if the non-exempt use were found by the assessor, MCL 211.191 would require the assessor to determine the subject property's true cash value and issue an assessment to both the owner and occupant pursuant to MCL 211.3. Thereafter, "either or both" would be liable for the taxes. However, those are not the facts of this case. That is, at the March Board of Review, Petitioner notified Respondent of the non-exempt user and requested that the assessment be issued to the lessee-user.

The question remains: how does MCL 211.181 square with the above statutory requirements and does the "lessee-user tax act" require or even allow the taxable property be assessed to the lessee only? In general terms, property owned by a qualifying non-profit or otherwise exempt eligible group still requires that the property be used for the exempt purpose, making an exemption a multi-part test. This general premise holds true under MCL 211.7m, which begins by requiring ownership by a political subdivision of the state and ends stating that the property must also be "used to carry out a public purpose." It would seem that, to the extent a portion of the property is leased to a for profit entity and provides rental income to the owner, that portion would necessarily fail the use requirement of MCL 211.7m, and thus, be taxable. Therefore, it appears as though MCL 211.7m would require Respondent to assess that portion of the property to the owner and occupant pursuant to MCL 211.191 and MCL 211.3, and MCL 211.181 would provide for collection remedies against the lessee-user "as if the owner."

However, MCL 211.24 provides, in pertinent part, that:

> (1) On or before the first Monday in March in each year, the assessor shall make and complete an assessment roll, upon which he or she shall set down all of the following:
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> (a) The name and address of every person liable to be taxed in the local tax collecting unit with a full description of all the real property liable to be taxed. If the name of the owner or occupant of any tract or parcel of real property is known, the assessor shall enter the name and address of the owner or occupant opposite to the description of the property.
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> * * *
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> (g) Property assessed to a person other than the owner shall be assessed separately from the owner's property and shall show in what capacity it is assessed to that person, whether as agent, guardian, or otherwise.

Clearly, MCL 211.24(g) contemplates a scenario where an individual or entity other than the known owner will be assessed for certain property. Considering the above alongside MCL 211.181, and given the facts of this case, the assessor must

issue a separate parcel number for the property "liable to be taxed," separate from the property that is not liable to be taxed. The assessment associated with that taxable property must be issued to the lessee-user pursuant to MCL 211.181 as Petitioner has put Respondent on notice as to the individual or entity liable under the statute. Absent such notice or knowledge, Respondent's actions would have been proper, and in fact required, under MCL 211.191. Here, however, Respondent was made aware of the occupant, the lease and the statutory requirements of MCL 211.181 and should have issued a separate assessment for the property liable to be taxed to the lessee-user only, as distinct from the remainder of the buildings and land under the tax exempt parcel number.

VI. JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition pursuant to MCR 2.116(C)(10) is GRANTED.

IT IS FURTHER ORDERED that Respondent shall issue a separate parcel number for the property liable to be taxed and issue the assessment and any tax liability arising from that assessment to the lessee-user of the property only.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: April 7, 2011 By: Steven H. Lasher