

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

Brian Bolden,
Petitioner,

v

MTT Docket No. 313745

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(4)

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT
PURSUANT TO MCR 2.116(C)(10)

In this motion, the Michigan Department of Treasury (Respondent) requests that this case be dismissed for lack of subject matter jurisdiction. At issue is an assessment of sales tax levied by Respondent against Mr. Brian Bolden (Petitioner) for sales of taxable non-food items, as well as taxable food for immediate consumption, sold from a store owned by Petitioner known as Mr. B's Party Store. Respondent asserts that Petitioner admits that he is liable for a portion of the sales tax owed. Respondent further asserts that, in spite of this admission, Petitioner failed to remit payment of the tax not in dispute prior to filing this appeal as required by MCL 205.22(1). Petitioner did not file a response to Respondent's motion.

For the reasons set forth herein, the Tribunal finds that Respondent's motion for summary disposition under MCR 2.116(C)(4) must be denied. However, Respondent is entitled to summary disposition under MCR 2.116(C)(10).

RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

On October 1, 2009, Respondent filed a motion for summary disposition pursuant to MCR 2.116(C)(4) and a brief in support thereof. In its brief, Respondent states, *inter alia*, that:

1. “As a result of an audit, [Respondent] assessed a sales tax deficiency in the amount of \$51,351.00, plus penalty and interest, against [] Petitioner [] related to the operation of Bolden’s party store, Mr. B’s Party Store. The final assessment was issued on March 8, 2005, as assessment number M774934. [Petitioner] made no payment on the assessment prior to filing this Tribunal action.” (Brief, pp1-2)
2. “In [Petitioner’s] trial brief, he stated that he believes that he owes \$8,721.00 of the assessed tax. The Tribunal noted this admission in an order dated October 30, 2006, in which [Petitioner] was ordered to pay the uncontested portion of the tax within 30 days. As of [September 25, 2009], [Petitioner] has not paid this uncontested tax.” (Brief, p2)
3. “[Petitioner’s] appeal of the sales tax deficiency assessment without paying the uncontested portion of the tax deprives the Tribunal of jurisdiction over this case, and is the basis for this motion.” (Brief, p2)
4. “Pursuant to MCR 2.116(C)(4), the Tribunal lacks subject matter jurisdiction over this appeal, due to the Petitioner’s failure to pay the uncontested portion of the tax prior to filing his appeal.” (Brief, p2)
5. “MCR 2.116(D)(4). . .states that ‘[t]he grounds listed in subrule (C)(4) . . .may be raised at any time,’ including on appeal.” (Brief, p2)
6. “MCL 205.22(1) requires a taxpayer to pay the uncontested part of the assessment prior to filing an appeal in the Tribunal. This requirement is characterized as a ‘prerequisite’ to any appeal in the Tribunal. Furthermore, in *Heraud v Dep’t of Treasury*, [118 Mich App 65; 324 NW2d 535 (1982)], the Court of Appeals noted that the uncontested portion of an assessment must be paid prior to filing an appeal in the Tribunal.” (Brief, p3)
7. “However, in the present case, [Petitioner] stated in his trial brief that he agrees that he owes \$8,721 of the assessed tax. [Petitioner] did not pay this uncontested amount prior to filing his petition in the Tribunal. . . .”
8. “[Petitioner’s] failure to meet the statutory prerequisite for appeal by paying the uncontested portion of the assessment before filing his appeal precludes the Tribunal from jurisdiction over this appeal. Absent subject matter jurisdiction, any action the Tribunal takes other than to dismiss this case, is void.” (Brief, p4)

Respondent also filed an affidavit from Mr. Glenn R. White, administrator of the Tax Policy Division of the Michigan Department of Treasury in support of its motion. In his affidavit, Mr. White states that as of September 23, 2009, Petitioner “has not paid the uncontested portion of the tax assessed under Final Assessment No. M774934. . . .”

PETITIONER'S RESPONSE

As previously stated, Petitioner failed to file a response to Respondent's motion.

FINDINGS OF FACT

1. Petitioner, Mr. Brian Bolden, is owner of Mr. B's Party Store, located at 1216 Kalamazoo, Grand Rapids, Michigan.
2. On March 8, 2005, Respondent issued to Petitioner a Final Bill for Taxes Due under the General Sales Tax Act for sales at retail that occurred at Mr. B's Party Store.
3. The assessment at issue is known as M774934 and includes \$51,351.00 in sales tax, \$12,838.00 in penalty, and \$7,676.43 in interest, which continues to accrue pursuant to MCL 205.1 *et seq.*
4. Petitioner filed the appeal in this case on April 5, 2005.
5. Petitioner admits that he owes \$8,721.00 of the \$51,351.00 in sales tax assessed in Assessment No. M774934.
6. Petitioner did not remit any of the undisputed tax prior to filing this appeal.

CONCLUSIONS 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). In the instant case, Respondent filed a motion for summary disposition under MCR 2.116(C)(4).

MCR 2.116(C)(4) 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). The issue of subject matter jurisdiction may be raised at any time. MCR 2.116(D)(3). When a court lacks jurisdiction over the subject matter, any action it takes, other than to dismiss the case, is absolutely void. *McCleese v Todd*, 232 Mich App 623, 628; 591 NW2d 375 (1998).

Subject matter jurisdiction is defined as the:

. . . court's competence to hear and determine cases of the general class to which proceedings in general belong; the power to deal with the general subject involved in the action. . . Subject matter jurisdiction deals with the court's competence to hear a particular category of cases. *Black's Law Dictionary*, (5th ed rev), p1278.

Pursuant to MCL 205.22(1):

A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision, or order.

Thus, MCL 205.22(1) establishes the Tribunal's subject matter jurisdiction in appeals of assessments, decisions or orders issued by Respondent. In this case, Petitioner appealed Respondent's assessment of sales tax. The Tribunal clearly has the competence and the power to hear this particular category of case. Respondent's MCR 2.116(C)(4) Motion is denied.

In its Motion, Respondent argues that, pursuant to MCL 205.22(1), Petitioner was required to remit the amount of uncontested tax prior to filing this appeal. MCL 205.22(1) provides, in pertinent part: "The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal." In his Petition, Petitioner asserts that he is not liable for the tax, penalty, and interest assessed by Respondent. However, in his trial brief and at the hearing held in this matter, Petitioner acknowledged that, in fact, he owes \$8,721.00 of the \$51,351.00 tax assessed. Petitioner asserts that he came to this realization while preparing for hearing.

Petitioner provided no excuse for why this determination could not have been made prior to filing this appeal.

In spite of the fact that Petitioner did not comply with MCL 205.22(1), the Tribunal gave Petitioner 30 days in which to remit the uncontested portion of the tax. According to the affidavit of Mr. Glenn White, filed by Respondent, Petitioner did not pay any of the \$8,721.00 in tax not in contention.

For this reason, the Tribunal finds that Respondent is entitled to summary disposition pursuant to MCR 2.116(C)(10), which provides the following ground upon which a motion for summary disposition 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." In this case, Petitioner failed to pay the uncontested portion of the tax and, as such, did not meet the jurisdictional requirements set forth in MCL 205.22. The Tribunal finds that the evidence demonstrates that there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law.

Therefore,

IT IS ORDERED that Respondent's Motion for Summary Disposition pursuant to MCR 2.116(C)(4) is DENIED.

IT IS FURTHER ORDERED that Respondent is GRANTED Summary Disposition pursuant to MCR 2.116(C)(10).

IT IS FURTHER ORDERED that Assessment No. M774934 is AFFIRMED.

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

MICHIGAN TAX TRIBUNAL

Entered: July 8, 2011

By: Patricia L. Halm