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

One Stop LLC,
Petitioner,

v MTT Docket No. 383661

City of Sterling Heights,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DISMISSING CASE

On March 22, 2010, Respondent filed a Motion for Summary Disposition in lieu of its first responsive pleading. In this Motion, Respondent requests that it be granted summary disposition pursuant to MCR 2.116(C)(4), (8) and (10). In support of this Motion, Respondent argues, *inter alia*, that:

1. "Petitioner . . . filed this Petition with the Tribunal on or about February 5, 2010 requesting a refund as a result of an allegedly improper calculation of its assessment for the year 2007."

2. "Petitioner's appeal to the Tribunal is a valuation appeal pursuant to MCL 205.735a."

3. "However, pursuant to MCL 205.735a, Petitioner's appeal to the Tribunal is almost three years past due."

4. "Pursuant to the very language of MCL 205.735a, this Honorable Tribunal lacks the jurisdiction to hear this appeal because Petitioner failed to file its Petition on or before May 31, 2007."

5. "[I]t is expected that Petitioner may argue it did not receive notice of the assessment. This argument is meritless pursuant to MCL 211.24c(4)."

Petitioner did not file an Answer to the Motion.

The Tribunal, having given due consideration to the Motion and the file in the above-captioned case, finds:

1. Petitioner filed its Petition on February 5, 2010. The Petition indicates that Petitioner is appealing its property's true cash and taxable values for the 2007 tax year. The Petition also indicates that the property is classified as commercial real property. The Petition provides, in pertinent part:

a. "The property is an office building but in 2007 was being constructed and had no tenants."

b. "Petitioner did not receive the tax notice for the assessment because the city sent it to the wrong address and then told petitioner it was too late to appeal to the local Board of Review."

c. "Respondent's two assessors admitted to petitioner they made a mistake in the assessment for 2007 and should have assessed it as a vacant lot and that even if assessed as a completed building it should have been much lower. They did assess it much lower for subsequent years."

2. Petitioner did not protest the assessment and timely filed its appeal, as required by MCL 205.735a. Moreover, even if Petitioner did not receive its tax notice, Petitioner could have appealed its property tax bill within 35 days of the issuance of the bill. See MCL 205.735a. See also *Electronic Data Systems Corporation v Township of Flint*, 253 Mich App 538; 656 NW2d 215 (2002). As such, the Tribunal has no jurisdiction over the property's assessment for the 2007 tax year.

3. The Tribunal also has no jurisdiction over the property's assessment for the 2007 tax year under MCL 211.53a, as the facts alleged by Petitioner do not establish a prima facie case indicating that the assessment at issue was the result of a clerical error (i.e., "an error of a transpositional, typographical, or mathematical nature") or a mutual mistake of fact (i.e., "an erroneous belief, which is shared and relied on by both parties"). See *International Place Apartments – IV v Ypsilanti Township*, 216 Mich App 104, 109; 548 NW2d 668 (1996), *Ford Motor Company* v *City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247, 256 (2006), *Eltel Associates, LLC v City of Pontiac*, 278 Mich App 588; 752 NW2d 492 (2008); and *Briggs Tax Service, LLC v Detroit Public Schools, et al*, 282 Mich App 29; 761 NW2d 816 (2008). Instead, the facts alleged indicate a valuation dispute based on the value of the partial construction. Respondent would have been precluded from assessing the property as vacant unless the construction began in 2007, which would have been a fact known by Petitioner and, as such, not shared and relied upon by the parties.

Therefore,

IT IS ORDERED that Respondent's Motion for Summary Disposition pursuant to MCR 2.116(C)(4), (8) and (10) is GRANTED.

IT IS FURTHER ORDERED that this case is DISMISSED.

MICHIGAN TAX TRIBUNAL

By: Patricia L. Halm

Entered: June 10, 2010
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