

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

PJ Hospitality, Inc.,
Petitioner,

v

MTT Docket No. 418352

Department of Treasury,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

FINAL OPINION AND JUDGMENT

A Proposed Opinion and Judgment was issued on November 14, 2012, affirming the assessments at issue. The Proposed Opinion and Judgment provided, in pertinent part, “the parties shall have 20 days from date of entry of this Proposed [Opinion and Judgment] to file exceptions and written arguments with the Tribunal consistent with Section 81 of the Administrative Procedures Act (MCL 24.281).” In addition, “[this Proposed Opinion and Judgment], together with any exceptions and written arguments, shall be considered by the Tribunal in arriving at a final decision in this matter pursuant to Section 26 of the Michigan Tax Tribunal Act (MCL 205.726).”

Petitioner filed exceptions to the Proposed Opinion and Judgment on November 30, 2012.

Respondent filed a response to the exceptions on December 5, 2012.

PETITIONER’S EXCEPTIONS

Petitioner contends that under MCL 205.27a(1) its liability is limited to the “fair market value of the business less the amount of any proceeds that are applied to balances due on secured interests that are superior to the lien provided for in Section

29(1).” Thus, Petitioner states that the fair market value, in this case, is zero because it should be reduced by debts to superior creditors (i.e., the federal debts). In addition, Petitioner contends that there is no value to the business as a going concern because of the “significant secured debts” and that “[e]ven if Respondent contends that it has a superior secured position, the significant higher priority of the federal debt erases any availability that might be found among restaurant equipment.” Exceptions, p. 4.

RESPONDENT’S RESPONSE TO PETITIONER’S EXCEPTIONS

Respondent contends that Petitioner has not shown any reason to correct or modify the Proposed Opinion and Judgment. More specifically, Respondent contends that Petitioner failed to “identify the assets it acquired and failed to establish the fair market value of those assets” and that “Petitioner’s federal tax lien argument was unsupported and insufficient to cancel or otherwise adjust the assessments at issue.” Response, p. 2-3. Respondent states, in regard to establishing the fair market value, that the Administrative Law Judge properly found that Petitioner provided no evidence to support its contentions of value. Petitioner failed to demonstrate what assets it acquired so that a value could be determined, Petitioner provided no appraisal, and Petitioner’s lay opinion of value was insufficient to demonstrate the value of the assets acquired. With regard to the federal tax liens, Respondent contends that Petitioner did not establish that the liens were superior and that “some of the liens did not even pertain[] to Petitioner.” Response, p. 4. In conclusion, Respondent states that, “[t]he ALJ properly found that Petitioner is liable for the entirety of the tax, penalty, and interest at issue.” Response, p. 5.

CONCLUSION

The Tribunal has reviewed the exceptions, response, and the case file, and finds that the Proposed Opinion and Judgment properly affirms the assessments against Petitioner. Petitioner's exceptions merely reiterate the arguments previously presented. Moreover, the issues addressed in the exceptions were considered in the Administrative Law Judge's determination, or otherwise lack merit. The Tribunal further finds that the Administrative Law Judge fully and adequately addressed all of Petitioner's exceptions in his Proposed Opinion and Judgment. Further, as Respondent properly contends in its response, Petitioner has failed to demonstrate good cause to justify the modifying of the Proposed Opinion and Judgment. More specifically, Petitioner did not demonstrate there was an error of law, mistake of fact, or fraud in the issuing of the Proposed Order.

Given the above, Petitioner has failed to show good cause to justify the modifying of the Proposed Opinion and Judgment. See MCL 205.762. As such, the Tribunal adopts the November 14, 2012, Proposed Opinion and Judgment as the Tribunal's Final Opinion and Judgment in this case, pursuant to MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact, and Conclusions of Law in the Proposed Order in this Final Opinion and Judgment. Therefore,

IT IS ORDERED that the Proposed Opinion and Judgment is AFFIRMED and adopted by the Tribunal as the Final Opinion and Judgment.

IT IS FURTHER ORDERED that Assessment Nos. P383771, Q740620, P106121, P106122, P144157, P286993, P365212, P448444, P574484, Q749534 are

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AFFIRMED.

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

MICHIGAN TAX TRIBUNAL

By: Kimbal R. Smith III

Entered: January 3, 2013