



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

Scott Group Custom Carpets LLC,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-000613

Michigan Department of Treasury,  
Respondent.

Presiding Judge  
Marcus L. Abood

**ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION**

**FINAL OPINION AND JUDGMENT**

**INTRODUCTION**

On September 16, 2020, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Respondent contends that it properly rescinded Petitioner's Eligible Manufacturing Personal Property (EMPP) Exemptions for 2017 and 2018 because Petitioner failed to timely pay the Essential Services Assessment (ESA) and penalty as a result of the audit.

On October 7, 2020, Petitioner filed a response to the Motion. In the response, Petitioner states that Respondent prematurely rescinded the personal property exemptions because April 15 had not yet passed.

The Tribunal has reviewed the Motion, response, and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition is warranted at this time.

### **RESPONDENT'S CONTENTIONS**

In support of its Motion, Respondent contends that Petitioner did not timely appeal the assessment of the post-audit ESA taxes and interest. MCL 211.1057(6) makes clear that Petitioner had 35 days to pay the assessment issued as the result of an audit, and MCL 211.1057(7) allows a claimant to appeal a post-audit assessment by filing a petition with the Tribunal. Petitioner makes no allegation that it neither paid the assessment or filed an appeal with the Tribunal. The only issue is whether the rescission of the EMPP Exemptions was proper, and the rescission was proper because the law requires rescission. Petitioner appears to apply the April 15 deadline for payment of the original ESA tax, instead of the post-audit deadline of 35 days. This deadline applies to the "assessment year," which refers to the year when the original assessment is levied. Treasury did not prematurely issue the Orders of Rescission because MCL 211.1057(5)(a) provides that the deadline to issue these orders is the first Monday in June, but Respondent otherwise has discretion when to issue them. The audit determinations were assessments such that the payment deadline and rescission penalty sections were triggered.

### **PETITIONER'S CONTENTIONS**

In support of its response, Petitioner contends that Petitioner, not Respondent, is entitled to summary disposition under MCR 2.116(I)(2). Respondent's rescission of the EMPP exemptions for 2017 and 2018 was premature. Under the clear and unambiguous language of MCL 211.1057(5), rescission of an EMPP Exemption is only appropriate if the required payment is not received by April 15 of the year following the assessment. Respondent requests summary disposition because Petitioner did not pay

or attempt to pay the ESA tax liability within 35 days of the January 6, 2020 Audit Summaries. MCL 211.1057(5) expressly limits rescission to those instances where “an eligible claimant does not submit payment in full and any penalty due under subsection (4) or (6) by April 15 of the year following the assessment year...” Respondent’s interpretation reads out the “or” of this provision. Thus, the April 15 deadline applies to the audit subsection. Petitioner’s interpretation does not require the Tribunal to ignore the 35 day payment deadline as a result of an audit. Additional liability as the result of an audit is due within 35 days, but rescission is not authorized unless full payment has not been made by the following April 15. Without support, Respondent asserts that the April 15 deadline only applies to the original ESA tax. Nothing in MCL 211.1055 distinguishes between “original assessments” and “post-audit assessments.” Respondent itself admits that the additional assessment is an assessment. Respondent’s unauthorized and illegal rescission meant that Petitioner was unable to make an ESA payment between March 6, 2020 and April 15, 2020. Respondent also asserts that the Audit Determination Summaries were not assessments that triggered the 35 day due date. The Audit Determination Summaries are either assessments or they are not.

### **STANDARD OF REVIEW**

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.<sup>1</sup> In this case, Respondent moves for summary disposition under MCR 2.116(C)(8) and (10). Motions under MCR 2.116(C)(8) are appropriate

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<sup>1</sup> See TTR 215.

when “[t]he opposing party has failed to state a claim on which relief can be granted.”

The Court of Appeals has held that:

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule “[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.” When reviewing such a motion, a court must base its decision on the pleadings alone. In a contract-based action, however, the contract attached to the pleading is considered part of the pleading. Summary disposition is appropriate under MCR 2.116(C)(8) “if no factual development could possibly justify recovery.”<sup>2</sup>

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted “when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law.”<sup>3</sup>

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.<sup>4</sup> The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.<sup>5</sup> The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.<sup>6</sup> Where the burden of proof at trial on a dispositive

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<sup>2</sup> *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003) (citations omitted).

<sup>3</sup> *Lowrey v LMPS & LMPJ, Inc*, 500 Mich. 1, 5; 890 NW2d 344 (2016) (citation omitted).

<sup>4</sup> See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

<sup>5</sup> See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

<sup>6</sup> *Id.*

issue rests on a non-moving party, the non-moving 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.<sup>7</sup> If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.<sup>8</sup>

Summary disposition under MCR 2.116(l)(2) is appropriate “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment as a matter of law.”<sup>9</sup> Thus, under this rule the court may render judgment in favor of the opposing party.

### **CONCLUSIONS OF LAW**

The Tribunal has carefully considered Respondent’s Motion under MCR 2.116 (C)(8) and (10) and finds that granting the Motion is warranted. The parties do not dispute that Petitioner was granted an EMPP Exemption for the 2017 and 2018 tax years, and that on December 2, 2019, Respondent issued ESA - Audit Determination Summaries for those tax years.<sup>10</sup> Respondent asserts, and Petitioner does not dispute, that Petitioner did not pay the assessments.<sup>11</sup> On March 6, 2020, Respondent issued two orders rescinding Petitioner’s EMPP Exemptions for the 2017 and 2018 tax years.<sup>12</sup>

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<sup>7</sup> See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

<sup>8</sup> See *McCormic v Auto Club Ins Ass’n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

<sup>9</sup> See also *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000).

<sup>10</sup> See Affidavit of Michael Klunder, ¶¶ 6, 8, attached as exhibit A to Petitioner’s Response to Motion, October 7, 2020; ESA – Audit Determination Summaries, attached as exhibits A and B to Respondent’s Motion, September 16, 2020.

<sup>11</sup> See Respondent’s Motion, p 10; Petitioner’s response, pp 4-5.

<sup>12</sup> See Eligible Manufacturing Personal Property Exemption – Orders of Rescission, attached as exhibits C and D to Respondent’s Motion.

The State Essential Services Assessment Act (the Act), MCL 211.1051 *et seq.*, provides for a levy on eligible personal property.<sup>13</sup> MCL 211.9m provides the EMPP exemption, and failure to pay an assessment under the Act may result in the rescission of an EMPP exemption. More specifically, Section 7 of the Act provides, in part:

(5) For any assessment year in which an eligible claimant does not submit payment in full and any penalty due under subsection (4) or (6) by April 15 of the year following the assessment year, or if the department discovers that the property is not eligible under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, all of the following shall apply:

(a) The department shall rescind no later than the first Monday in June for the immediately preceding assessment year any exemption described in section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, granted for any parcel for which payment in full and any penalty due have not been received or for which the department discovers that the property is not eligible under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n.<sup>14</sup>

The Act requires Respondent to create an audit program,<sup>15</sup> and in subsection 6 of Section 7 of the Act, it states that

an assessment as a result of an audit shall be paid in full within 35 days of issuance and shall include penalties and interest as described in section 154(3) of the general property tax act, 1893 PA 206, MCL 211.154. Refunds as a result of an audit under this subsection shall be without interest. The exemption for personal property for which an assessment has been issued as a result of an audit under this subsection shall be subject to the rescission provisions of subsection (5) for the years of the assessment if full payment is not timely made as required by this subsection.<sup>16</sup>

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<sup>13</sup> MCL 211.1055(1).

<sup>14</sup> MCL 211.1057(5)(a).

<sup>15</sup> MCL 211.1057(6).

<sup>16</sup> MCL 211.1057(6).

A fundamental rule of statutory construction is that every word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible.”<sup>17</sup> When interpreting a statute, a court considers

both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. As far as possible, effect should be given to every phrase, clause, and word in the statute. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended.<sup>18</sup>

Further, a court’s task when interpreting a statute is to “discern the ordinary meaning of the language in the context of the statute as a whole.”<sup>19</sup> Subsection 5 provides that, “[f]or any assessment year in which an eligible claimant does not submit payment in full and any penalty due under subsection (4) or (6) by April 15 of the year following the assessment year. . . all of the following shall apply.” The “following” provisions, subsections 5(a) through (f), are the rescission provisions.<sup>20</sup> Although the first sentence

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<sup>17</sup> *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 714; 664 NW2d 193 (2003) (quotation marks and citation omitted).

<sup>18</sup> *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999) (quotation marks and citation omitted).

<sup>19</sup> *Tomra of North America, Inc v Dep’t of Treasury*, \_\_\_ Mich \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2020) (Docket Nos. 158333 & 158335); slip op at 4.

<sup>20</sup> Subsections 5(a) through (f) provide:

(a) The department shall rescind no later than the first Monday in June for the immediately preceding assessment year any exemption described in section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, granted for any parcel for which payment in full and any penalty due have not been received or for which the department discovers that the property is not eligible under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n.

(b) Upon request of the department, the state tax commission shall issue an order to rescind no later than the first Monday in June for the immediately preceding assessment year any exemption under section 9f of the general property tax act, 1893 PA 206, MCL 211.9f, which exemption was approved under section 9f of the general property tax act, 1893 PA 206, MCL 211.9f, after 2013 for any parcel for which payment in full and any penalty due have not been received or for which the state tax commission discovers that the property is not eligible personal property.

(c) Upon request of the department, the state tax commission shall issue an order to rescind no later than the first Monday in June for the immediately preceding assessment

of subsection 5 provides that non-payment by April 15 makes the rescission provisions applicable, it does not state that failure to pay by that date is the *only* way for the rescission provisions to apply. That subsection also states that the rescission provisions apply “if the department discovers that the property is not eligible under section 9m or 9n of the general property tax act. . . .”<sup>21</sup> And subsection 6 provides that, “if full payment is not timely made as required by this subsection,” i.e., within 35 days of the assessment, the rescission provisions are *also* applicable. Accordingly, the Tribunal concludes that the unambiguous language of the Act provides that, when a claimant has not paid the assessment as a result of an audit within 35 days, Respondent must rescind the exemption, regardless of whether April 15 has passed. Under Petitioner’s interpretation, the rescission provisions could only ever apply if an eligible claimant did not make payment in full by April 15. This interpretation would render nugatory the requirement to pay an assessment as a result of an audit within 35 days. The Tribunal’s

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year any exemption for eligible personal property subject to an extended industrial facilities exemption certificate under section 11a of 1974 PA 198, MCL 207.561a, for any parcel for which payment in full and any penalty due have not been received or for which the department discovers that the property is not eligible personal property.

(d) Upon request of the department, the state tax commission shall issue an order to rescind no later than the first Monday in June for the immediately preceding assessment year any extended exemption for eligible personal property under section 9f(8)(a) of the general property tax act, 1893 PA 206, MCL 211.9f, for any parcel for which payment in full and any penalty due have not been received or for which the department discovers that the property is not eligible personal property.

(e) The eligible claimant shall file with the assessor of the township or city within 30 days of the date of the rescission issued under subdivisions (a) to (d) a statement under section 19 of the general property tax act, 1893 PA 206, MCL 211.19, for all property for which the exemption has been rescinded under this section.

(f) Within 60 days of a rescission under subdivisions (a) to (d), the treasurer of the local tax collecting unit shall issue amended tax bills for any taxes, including penalty and interest, that were not billed under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, or under 1974 PA 198, MCL 207.551 to 207.572, and that are owed as a result of the rescission. MCL 1057(5)(a)-(f).

<sup>21</sup> MCL 211.1057(5)(a).



interpretation does not render the “or (6)” language in subsection 5 nugatory because, as explained above, failure to “submit payment in full and any penalty due under subsection (4) or (6) by April 15 of the year following the assessment year” is an independent circumstance that triggers the rescission provisions.

The Tribunal also concludes that, despite Petitioner’s contention, “April 15 of the year following the assessment year” has passed in this instance. The definition section of the Act states that the “assessment year” is “the year in which the state essential services assessment levied under section 5 is due.”<sup>22</sup> The definitions further provide that an “assessment” is the “state essential services assessment levied under section 5.”<sup>23</sup> Section 5 of the Act provides:

(1) Beginning January 1, 2016, the state essential services assessment is levied on all eligible personal property as provided in this section.

(2) The assessment under this section is a state specific tax on the eligible personal property owned by, leased to, or in the possession of an eligible claimant on December 31 of the year immediately preceding the assessment year. . . .”<sup>24</sup>

The Audit Determination Summaries state that the years at issue are 2017 and 2018,<sup>25</sup> and Petitioner does not contend that those summaries concern different years.

Accordingly, payment of those assessments was due in 2017 and 2018,<sup>26</sup> which makes 2017 and 2018 the assessment years.<sup>27</sup> Further, the Act also specifically delineates between the “assessment levied under section 5” and “an assessment issued, including

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<sup>22</sup> MCL 211.1053(a)(ii)(c).

<sup>23</sup> MCL 211.1053(a)(ii)(b).

<sup>24</sup> MCL 211.1055. The remaining portion of this section provides the way that the assessment is calculated.

<sup>25</sup> See ESA – Audit Determination Summaries, attached as exhibits A and B to Respondent’s Motion.

<sup>26</sup> See MCL 211.1057(3).

<sup>27</sup> See MCL 211.1053(a)(ii)(b).

penalties, interest, or rescission, as a result of an audit conducted under subsection (6)” by providing different appeal deadlines.<sup>28</sup> Thus, reading the Act as a whole, as the Tribunal must,<sup>29</sup> supports the conclusion that the “assessment year” is the year when Respondent first imposes the assessment, and not the year in which it imposes the assessment as the result of an audit.<sup>30</sup> Therefore, in this case, “April 15 of the year following the assessment year”<sup>31</sup> had passed prior to Respondent rescinding Petitioner’s EMPP Exemptions because the assessment years were 2017 and 2018 and Respondent did not rescind the EMPP Exemptions until March 6, 2020.<sup>32</sup> Accordingly, Respondent did not rescind the EMPP Exemptions prior to April 15 in the year after the assessment year.

The Tribunal concludes that no factual development could justify recovery for Petitioner and there is no dispute of material fact concerning the rescission of the EMPP Exemptions. Because the Tribunal concludes that rescission was proper under the Act, and this was the only issue raised in the Petition, summary disposition in Respondent’s favor is appropriate under MCR 2.116(C)(8) and (10), and summary disposition in Petitioner’s favor under MCR 2.116(I)(2) is not warranted.

## **JUDGMENT**

IT IS ORDERED that Respondent’s Motion for Summary Disposition under MCR 2.116(C)(8) and (10) is GRANTED.

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<sup>28</sup> See MCL 211.1057(7).

<sup>29</sup> See *Tomra*, \_\_\_ Mich at \_\_\_; slip op at 4.

<sup>30</sup> See MCL 211.1057, which repeatedly refers to dates occurring “in each assessment year.”

<sup>31</sup> MCL 211.1057(5)(a).

<sup>32</sup> See Eligible Manufacturing Personal Property Exemption – Orders of Rescission, attached as exhibits C and D to Respondent’s Motion.

IT IS FURTHER ORDERED the March 6, 2020 Orders of Rescission for the 2017 and 2018 tax years are AFFIRMED.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

### **APPEAL RIGHTS**

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.<sup>33</sup> Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.<sup>34</sup> A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.<sup>35</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>36</sup>

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<sup>33</sup> See TTR 261 and 257.

<sup>34</sup> See TTR 217 and 267.

<sup>35</sup> See TTR 261 and 225.

<sup>36</sup> See TTR 261 and 257.

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal by right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”<sup>37</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>38</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>39</sup>

By 

Entered: January 8, 2021  
wmm

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<sup>37</sup> See MCL 205.753 and MCR 7.204.

<sup>38</sup> See TTR 213.

<sup>39</sup> See TTR 217 and 267.