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

The Village of Sage Grove,
Petitioner,

v MTT Docket No. 14-000357

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

On May 22, 2014, Respondent filed a Motion requesting that the Tribunal render judgment in its favor under MCR 2.116(C)(4) and (C)(7). In the Motion, Respondent states:

a. "On December 27, 2011, Sage Grove applied for a property tax exemption on the claim that it qualified for the senior citizen housing exemption set forth in MCL 211.7d. . . . However, the assessor did not complete the approval form and submit it to Treasury until October 22, 2012. . . . The exemption 'begins on December 31 of the year in which the exemption is approved [. . .] and shall continue until the property is no longer used for occupancy or use solely by elderly or disabled families.' MCL 211.7d(2)."

b. "Treasury issued its decision on November 29, 2012. . . . In it, Treasury approved Sage Grove for the exemption under MCL 211.7d, and notified Sage Grove that Treasury would begin issuing payments in lieu of Sage Grove's taxes beginning in 2013. . . . Treasury also clarified that the reimbursement was between the City of Kalamazoo and the State of Michigan. . . . Thereafter, Sage Grove contacted Treasury regarding payment of its 2012 taxes. . . . On December 6, 2012, Treasury responded and clarified that it would not issue a payment in lieu of taxes for tax year 2012."

c. "This Tribunal lacks subject matter jurisdiction over the decision challenged in Petitioner's Petition. Petitioner . . . failed to comply with the requirements of MCL 205.735a(6), which requires a petitioner to appeal the final decision, ruling or determination to the Tribunal within 35 days. Here, Treasury made its decision regarding Sage Grove's exemption claim on November 29, 2012. It is now 2014, and Sage Grove is just now appealing. This appeal is untimely, and this Tribunal does not have jurisdiction."

d. "Treasury issued its decision, pursuant to MCL [211.7d], on November 29, 2012. . . . In that decision, Treasury made clear that there would not be a payment in lieu of taxes, permitted by MCL 211.7d for a facility approved to participate in the senior citizen housing property, for the 2012 tax year in e-mail correspondence with Sage Grove on

December 6, 2012. . . . Therefore, at the latest, Sage Grove had knowledge of the denial by December 6, 2012."

e. "Here, the petition was filed well beyond the 35-day period. . . . Therefore, Sage Grove failed to appeal the decision within the time permitted by MCL 205.735a(6), and as a consequence, this Tribunal does not have jurisdiction to hear its appeal."

On June 12, 2014, Petitioner filed a response to Respondent's Motion for Summary Disposition. In the response, Petitioner states:

a. "In 2011, Sage Grove applied for enrollment into a payment in lieu of taxes program with the State of Michigan under MCL 211.7d. . . . Sage Grove applied for enrollment under MCL 211.7d through the City of Kalamazoo in December 2011, to which the City has attested . . . . In a letter dated November 29, 2012, Treasury notified Sage Grover that it was approved for enrollment in the program and that Sage Grove would be exempt from property taxes for tax year 2013 and subsequent years, even though Sage Grove applied for enrollment prior to tax year 2012. The letter from Treasury did not address whether Sage Grove was eligible for exemption under 211.7d for tax year 2012."

b. "On January 24, 2014, Sage Grove sent a request to Treasury for exemption from property taxes under MCL 211.7d for tax year 2012. Specifically, the letter noted that Sage Grove timely filed its application for tax year 2012 exemption under MCL 211.7d with the City of Kalamazoo prior to December 31, 2011. . . . Treasury replied with a letter in which merely referenced its November 2012 letter as its 'decision regarding the Village of Sage Grove's entrance into the program beginning with the 2013 payment in lieu of taxes, and for no other prior year.' . . . Sage Grove followed up with an additional letter on March 5, 2014, requesting a determination to be made for tax year 2012. . . . Treasury has not responded to this letter[.]"

c. "Treasury claims that it issued a decision denying the exemption for 2012 taxes in its November 29, 2012 letter. . . . There is nothing in this purported determination that addresses tax year 2012; it simply confirms that Sage Grove is approved for tax year 2013 and subsequent years. Certainly it cannot be true that failing to address tax year 2012 is the functional equivalent of expressly denying the exemption for tax year 2012."

d. "Clearly, after the November 29, 2012 response from Treasury was received, the question remained as to whether Sage Grove is eligible for 2012 property tax exemption under MCL 211.7d. With this question being unanswered, it is curious that Treasury can contend that the letter was a determination, 'a final decision' 'not requiring any further judicial action.' Certainly that response was lacking in finality as to the question of the 2012 exemption."

e. "Since Sage Grove did not receive a determination regarding its exemption for tax year 2012, it sent a letter to Treasury on January 24, 2014 . . . requesting that Treasury make

an actual determination regarding the exemption for tax year 2012. Treasury's response came in the form of a letter on February 12, 2014 . . . in which it referenced its November 29, 2012 letter. This response did not contain an express determination regarding Sage Grove's requested exemption for tax year 2012, however, because it was a response to Sage Grove's express request for a determination regarding the 2012 exemption, Sage Grove appeals it as a denial of the exemption for tax year 2012. If Treasury's February 12, 2014 letter is considered its determination, then Sage Grove's March 5, 2014 appeal to this Tribunal would be timely pursuant to MCL 205.735a(6)."

f. "Even though none of Treasury's responses provide a clear determination, if any are going to be considered a determination, it should at least be the response that followed Sage Grove's express and specific request for MCL 211.7d exemption for tax year 2012."

g. "Not only was Treasury's November 29, 2012 letter **not** a determination regarding MCL 211.7d exemption for tax year 2012, but it is arguable that, to this day, Treasury has yet to expressly render a decision regarding tax year 2012. None of the correspondence from Treasury has been responsive to the specific question posed by Sage Grove regarding whether it qualifies for tax exemption under MCL 211.7d. So, if there exists an actual basis for this Tribunal lacking jurisdiction over this matter, it would be because the matter is not yet ripe. However, if this is the case, the Tribunal still has the authority to let this appeal proceed. In *Manor House Apartments v City of Warren*, 204 Mich App 603, 516 NW2d 530 (1994), the Court ruled that the Tax Tribunal was not deprived of jurisdiction for petitioner's failure to exhaust administrative remedies when the exhaustion would be futile. However, the Court said, it must be 'clear than an appeal to an administrative board is an exercise in futility and nothing more than a formal step on the way to the courthouse.' Id. at 605 quoting Turner v Lansing Twp, 108 Mich App 103, 108, 310 NW2d 287 (1981). If it is found that a determination has yet to be made regarding the 2012 tax exemption, it would be similarly futile for this Tribunal to require Treasury to make a determination before this appeal is inevitably heard, as Treasury's position regarding the exemption is now known."

h. "Based upon . . . [MCL 205.731(a)], it would be appropriate for this Tribunal to direct Treasury to make an actual and definite determination regarding the requested exemption by Sage Grove. Once a proper determination is made by Treasury, it would then be under the exclusive jurisdiction of the Tribunal for purposes of any review. But once again, even though the lack of jurisdiction would easily be cured through requiring Treasury to issue a clear determination, such an exercise would be futile at this point, and a waste of judicial resources. It is now clear that Treasury's determination would be to deny the exemption for 2012, which means that it is a foregone conclusion that the appeal will ultimately end up in front of this Tribunal. Therefore, it is appropriate for this Tribunal to allow the appeal to proceed."

i. "Treasury's website states that '[s]ubmission of the first payment in lieu of tax is dependent upon when the facility *applies* for the exemption [italics added in the original.]' . . . A facility applies for the exemption by submitting a form prescribed by

Treasury (Form 4719) to the local assessor's office. Treasury's website provides an example to illustrate the timeline for exemption application. In the example, Treasury states that if a newly constructed facility had its first resident move in on March 5, 2010, the owner would have to submit an application (Form 4719) to the local assessor by December 31, 2010, and exemptions begin December 31 of the year the exemption is approved."

j. "It is difficult to reconcile Treasury's hypothetical situation from its website with its handling of the Sage Grove matter. . . . The way in which Treasury had handled Sage Grove's exemption, if consistently applied to other applicants, would always result in a one-year lag before enactment of the exemption, which would result in every applicant being required to pay one year of property taxes. It hardly seems possible that the Legislature would have envisioned such a delay in the effective date of the exemption. As long as an applicant timely files before the tax year in which it is seeking exemption, and it qualifies for the exemption, the entity should receive the exemption for that tax year."

k. "Sage Grove filed its Form 4719 application for exemption under MCL 211.7d with the City on December 27, 2011. . . . As previously stated, based upon the directions of Form 4719 and Treasury's website with regard to filing dates, the commencement of the tax exemption is dependent upon when the tax paying entity files the application. An entity must file an application with the local assessor by December 31 of the year the exemption is approved. Sage Grove filed its application before December 31, 2011 (December 27, 2011). The exemption was ultimately approved by both the City and Treasury. Therefore, Sage Grove should have been entitled to tax exemption beginning in tax year 2012. Treasury's decision to begin the tax exemption with tax year 2013 was arbitrary and inconsistent with MCL 211.7d, Treasury's MCL 211.7d application forms, and Treasury's own website."

l. "As further evidence of the arbitrary nature in which Treasury applies the MCL 211.7d exemption, this Tribunal need look no further than another property with a connection to the Petitioner. The Village of Spring Meadows II ('Spring Meadows'), also filed for an exemption under [MCL] 211.7d on December 27, 2011. . . . The purpose for which Spring Meadows sought the exemption was the same as Sage Grove, to provide housing for the elderly. . . . Yet, for some unknown reason, Treasury commenced the exemption for Spring Meadows with tax year 2012, whereas it would not begin Sage Grove's exemption until tax year 2013."

m. "Treasury does not appear to be carrying out the exemption under MCL 211.7d with any clear, determining principle. Indeed, its method of when to commence the exemption is unclear, and appears to vary on a case by case basis. Treasury provides deadlines on its website and forms, which one would think should result in clear enforcement, but such is not the case. Clearly it could not have been the intent of the Legislature to have this exemption carried out in such an inconsistent manner."

n. "Sage Grove and Spring Meadows applied for exemption under MCL 211.7d under virtually identical circumstances. Yet, Treasury commenced Spring Meadows' exemption with tax year 2012 and Sage Grove's with tax year 2013. . . . This is obviously evidence of a lack of uniformity in the mode of assessment of virtually identical ventures. This lack of consistency in granting the exemption is clearly not uniform, and therefore, violates Article IX, Section 3 of the Michigan Constitution."

o. "Sage Grove was in contact with Treasury throughout its process of applying for the exemption. In a December 19, 2011 email to Sage Grove representative Nathan Keup, Karla Miller, representing the Finance and Accounting Division of Treasury, acknowledged receipt of Sage Grove's request for exemption, but notified Mr. Keup that additional documentation was required. . . . The additional documentation requested by Treasury required a signature by the City Assessor, which was conveyed to the Assessor's office by Mr. Keup in a December 27, 2011 email. . . . A representative of the City Assessor responded to Mr. Keup, stating that the Assessor would be unable to provide her signature until returning to her office ***on January 3, 2012***. . . . Mr. Keup responded to the email from the Assessor's office on December 27, 2011, stating that he looked forward to receiving the signed document from the Assessor's office. . . . Mr. Keup also copied Karla Miller on the December 27 email to the Assessor's office. ***On December 28, 2011, Karla Miller emailed Mr. Keup regarding the fact that the Assessor would not be able to sign the document until after the first of the year, stating that she could '<u>wait until the assessor is back</u>.'"*** [Emphasis in the original.]

p. "Sage Grove was actively pursuing its application, in order to file before December 31, as required by statute. The statement from the Treasury representative stating that she '***can wait until the assessor is back***' is reasonably construed as confirmation from Treasury that Sage Grove had timely pursued its exemption, and Treasury was ***not*** going to consider any documentation received after December 31 as being ***untimely***." [Emphasis in original.]

The Tribunal, having given due consideration to the Motion, response, and the case file, finds there is no specific Tribunal rule governing motions for summary disposition, and, as such, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions. See TTR 215.

Respondent's Motion under MCR 2.116(C)(4) relates to the Tribunal's subject matter jurisdiction over the denial of the property tax exemption at issue and requires the Tribunal to consider whether "the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate . . . [a lack of] subject matter jurisdiction." See *CC Mid West v McDougall*, 470 Mich 878, 878; 683 NW2d 142 (2004). That Motion is not, however, "appropriate," as indicated by the Michigan Court of Appeals in *Bonar v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued May 30, 2013 (Docket No. 310707). More specifically, the Court of Appeals stated in *Bonar*:

> The MTT dismissed petitioner's appeal by granting respondent's motion for summary disposition pursuant to MCR 2.116(C)(4) (lack of subject matter jurisdiction). We note that respondent should have moved for summary disposition pursuant to MCR 2.116(C)(7) (statute of limitations) because the failure to timely file an appeal with the MTT merely results in the failure to invoke the MTT's jurisdiction. See, e.g., *Toaz v Dep't of Treasury*, 280 Mich App 457, 462; 760 NW2d 325 (2008). However, the MTT has subject matter jurisdiction over tax appeals even when that jurisdiction is not properly invoked in a particular case. MCL 205.731. Thus, MCR 2.116(C)(4) is not an appropriate ground for dismissal.

As indicated above, Respondent's Motion under MCR 2.116(C)(7) tests whether Petitioner's appeal of Respondent's denial is barred because of a statute of limitations, which, in this case, would be MCL 205.735a(6). Although the parties are not required to submit "supportive material" (i.e., "affidavits, depositions, admissions or other documentary evidence"), the Tribunal "must consider" such material "[i]f . . . submitted." Further, the contents of the Petition "are accepted as true unless contradicted by documentation submitted by the movant." See *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817, 823 (1999).

Although not pled, summary disposition under MCR 2.116(C)(8) "tests the legal sufficiency of the [Petition]. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-movant. *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.' *Id.* at 163. . . . When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5)." See *Maiden*, *supra*, at 119-120.

Similarly, 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 if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied. See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

The Michigan Supreme Court has also 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. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive 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. See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

Here, Petitioner is appealing the purported denial of a property tax exemption under MCL 211.7d(2), which provides:

> An owner of property may claim an exemption under this section on a form prescribed by the department of treasury. **The assessor of the local tax collecting unit in which the property is located shall approve or disapprove a claim for exemption under this section**. The assessor shall notify the owner and the department of treasury in writing of the exemption's approval or disapproval. **The department of treasury may deny an exemption under this section**. The department of treasury may grant an exemption under this section for 2012 and the 3 immediately preceding years for property that would have qualified for the exemption under this section if an owner of that property had timely filed in 2010 the form required under this subsection. If granting the exemption under this section results in an overpayment of the tax, a rebate, including any interest paid, shall be made to the taxpayer by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll within 30 days of the date the exemption is granted. The rebate shall be without interest. **An exemption under this section begins on December 31 of the year in which the exemption is approved under this subsection** and shall continue until the property is no longer used for occupancy or use solely by elderly or disabled families. The owner of property exempt under this section shall notify the local tax collecting unit in which the property is located and the department of treasury of any change in the property that would affect the exemption under this section. [Emphasis added.]

Contrary to Petitioner's contentions, MCL 211.7d does not require or otherwise provide for the filing of an "application" by December 31. Rather, MCL 211.7d specifically and clearly indicates that the exemption "begins on December 31 of the year in which the exemption is approved." Further, MCL 211.7d does not provide for Treasury's approval of applications or, more appropriately, claims. Rather, Treasury's authority is, with one exception,[1] limited to the denial of approved claims. In the instant matter, Petitioner submitted its claim for exemption to the Kalamazoo City Assessor on December 27, 2011, and the Kalamazoo City Assessor approved that claim on August 9, 2012.[2] As a result, Petitioner was entitled to an exemption beginning December 31, 2012, and not December 31, 2011.

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[1] Although Treasury can grant an exemption for 2012 and the three immediately preceding years, Petitioner filed the required form with the Assessor in 2011 and not 2010.

[2] The City Assessor did not sign or otherwise approve the claim when she returned to her office on January 3, 2012. Rather, the City Assessor waited until August 9, 2012, to approve the claim and then waited until October 22, 2012, to notify Treasury of the exemption's approval.

Notwithstanding the above, Petitioner is correct in its assertion that there is "nothing" in the November 29, 2012 letter that "addresses tax year 2012," as that letter merely acknowledges the City's August 9, 2012 approval and the commencement of the exemption on December 31, 2012, as provided by MCL 211.7d. Further, Respondent did not or, more appropriately, could not have, despite its February 12, 2014 letter, deny a claim of exemption for the 2012 tax year. More specifically, Treasury has never been notified in writing by the City of Kalamazoo of any claim by Petitioner that was approved by the City in 2011.[3] As such, there was nothing for Treasury to consider and deny relative to the 2012 tax year.[4]

Although Respondent's website is misleading,[5] the website does specifically indicate that the exemption "begins December 31 of the year in which the exemption is approved," as provided by MCL 211.7d. Further, the instructions for the completion of Form 4719 provide:

> Senior citizen and/or disabled housing facility owner/applicants (with 8 or more residential units, see MCL 211.7d) should complete this form, filing no later than December 31. **Once the Applicant section is completed, send this form with attachments/documentation to your Local Taxing Unit Assessor. All signatures must be completed by December 31 within year of requested exemption.** [Emphasis in the original.]

As indicated by the instructions, both the owner/applicant and the assessor must sign the claim "by December 31 within year of requested exemption" or, in the instant matter, by December 31, 2011, for the property to receive the exemption for the 2012 tax year.

Finally, the Spring Meadows claim submitted by Petitioner is incomplete. More specifically, the claim does not indicate when it was approved by the Kalamazoo City Assessor. The claim was,

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[3] Ms. Miller clearly had no authority to indicate that she could wait until the City Assessor was back on January 3, 2012, for purposes of signing or, more appropriately, approving the claim, as the approval would have occurred in 2012 and not 2011. Nevertheless, it certainly was not reasonable for Petitioner to assume that any documentation received after December 31 would be timely, particularly when the approval did not occur until August 9, 2012, or 219 days after the assessor was to be back on January 3, 2012. Further, Ms. Miller's "casual private advice or assurance of success" does not constitute exceptional circumstances that would justify the application of the doctrine of equitable estoppel, even if the Tribunal could apply that doctrine. See *Hughes v Almena Twp*, 284 Mich App 50, 78; 771 NW2d 453 (2009). See also *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 548; 656 NW2d 215 (2002) ("the Tax Tribunal has no powers of equity").

[4] Petitioner's January 24, 2014 letter does not constitute a claim for exemption for the 2012 tax year, as it was not on the prescribed form or approved by the City Assessor on or before December 31, 2011.

[5] The website indicates that an owner of property may claim an exemption by filing Form 4719 with the local assessor before December 31 of a given year. The filing of the claim before December 31would not, however, entitle the owner to a property tax exemption for the next succeeding year unless the claim is approved by the local assessor on or before December 31 of the year in which the claim is filed. The website further indicates that "[o]nly facilities that have been approved by the local assessor and Department of Treasury" are eligible. Although correct in a figurative sense, the literal or plain meaning of MCL 211.7d would require Treasury to indicate that facilities approved by the local assessor and not denied by Treasury are eligible, as the assessor's approval triggers the "beginning" of the exemption as long as the approved exemption is not denied by Treasury.

however, approved[6] prior to March 23, 2012, given Treasury's March 23, 2012 letter acknowledging the approval of the exemption by the City Assessor and the commencement of the exemption beginning December 31, 2011, for the 2012 tax year.

Given the above, Respondent is entitled to summary disposition but not under MCR 2.116(C)(4) or (C)(7). Rather, Respondent is entitled to summary disposition under either MCR 2.116(C)(8) or (C)(10), as Petitioner is not entitled to the relief requested in the Petition and 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 is GRANTED.

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

By: Steven H. Lasher

Entered: July 10, 2014

[6] Although the City Assessor's written notification to Treasury relative to the approval of the Spring Meadows claim is dated October 22, 2012, the Assessor had to have also notified Treasury prior to March 23, 2012, or there would have been no basis for the issuance of Treasury's March 23, 2012 letter. Further, the approval of that claim on January 3, 2012, for the 2012 tax year would not have been authorized by MCL 211.7d, as indicated herein.