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

Harry Fox, Inc,
Petitioner,

v

MTT Docket No. 383251

City of Roseville,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER OF DISMISSAL

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

1. Petitioner filed its initial pleading (i.e., petition) on January 1, 2010. The petition indicates that Petitioner is requesting the Tribunal "to refund the excess 2006 Winter Personal Property Tax mistakenly paid on February 15, 2007 in the amount of $19,507.51 and to refund the excess 2007 Summer Personal Property Tax mistakenly paid on September 1, 2007 in the amount of $24,237.23." The petition also indicates the property is classified as commercial personal property. The petition further provides, in pertinent part:

    a. "On November 28, 2004, the State Tax Commission ordered that the valuation of certain equipment owned and used by Harry Fox, Inc…be increased to include equipment Fox had claimed to be exempt…On December 27, 2004, Fox filed its Petition appealing the Tax Commission's Order and requesting that the Tribunal determine that [the] subject property be exempt from taxation and to reduce the assessed and taxable value of Petitioner's personal property."

    b. "On February 27, 2007, the Tribunal entered an order granting summary disposition for Petitioner holding that the equipment in question was exempt from personal property tax pursuant to MCL 211.9(q)…Thereafter in March, 2007, and again in September 2007, the City of Roseville requested a clarification from the Tax Tribunal of its Judgment to specify the values of the exempt equipment."

    c. "During this period, Petitioner sought its refund for the years in which it paid taxes on the exempt equipment, but the City refused, pending receipt of the requested clarification."

    d. "On November 7, 2007, the Tax Tribunal issued a Corrected Order Granting Summary Disposition for Petitioner setting the true [cash] value of the exemption equipment as $0.00 for tax purposes."

e. "On March 3, 2008, representatives of [Petitioner] and the City of Roseville met to discuss refund of the taxes paid out on the exempt equipment, not only for the years 2000-2002 set forth in the Petition to the Tax Tribunal, but also for the years 2003-2007 which were paid during the dispute which started in 2003 when the City of Roseville went to the State Tax Commission to add the exempt property to the tax roll, but which were paid only after the City threatened to close the Petitioner's business if they were not paid."

f. "Fox mistakenly paid 2006 Winter Personal Property Tax on the exempt equipment on February 15, 2007…and mistakenly paid its 2007 Summer Personal Property Taxes on said exempt equipment…on September 1, 2007…The City of Roseville also mistakenly accepted these payments."

g. "In this case, Fox is entitled to recover the personal property taxes it paid in February, 2007, and August, 2007, due to the mutual mistake of the assessor and taxpayer that the subject equipment was not exempt and subject to taxation."

2. Respondent filed an answer to the petition on March 9, 2010. The answer requests the Tribunal to dismiss the petition "as there is no error or mutual mistake of act by the assessing officer and taxpayer."

3. The Tribunal has no authority over the payment of the 2006 Winter Personal Property Tax or the 2007 Summer Personal Property Tax on the exempt equipment under MCL 205.735a, as Petitioner did not timely file its appeal or appeals. See *Electronic Data Systems Corporation v Township of Flint*, 253 Mich App 538; 656 NW2d 215 (2002).

4. The Tribunal also has no authority over the payment of the 2006 Winter Personal Property Tax or the 2007 Summer Personal Property Tax on the exempt equipment under MCL 211.53a, as the facts alleged by Petitioner do not establish a prima facie case indicating that the assessments at issue are 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*, ___ Mich ___; ___ NW2d ___ (2010). Rather, the facts alleged indicate that there no clerical error or mutual mistake of fact, as the issue of the property's exemption was being actively litigated by both parties for the 2000, 2001 and 2002 tax years at the time the payments were being made.

5. In addition to the above, Petitioner filed a motion in MTT Docket No. 312515 on November 17, 2008, requesting that the Tribunal permit it to amend the November 9, 2007 Order in that case to include the assessment of the property at issue in this case for the 2003, 2004, 2005, 2006 and 2007 tax years. The Tribunal entered an Order in MTT

Docket No. 312515 on October 15, 2009, denying Petitioner's November 17, 2008 Motion and indicating that the Tribunal could have had authority over those tax years if Petitioner had either filed an appeal for those tax years under MCL 205.735 and 205.735a or MCL 211.53a. The Tribunal erred, however, indicating a possible appeal under MCL 211.53a, as the subsequent decision of the Michigan Supreme Court in *Briggs*, *supra*, precludes any such appeal under MCL 211.53a. Therefore,

IT IS ORDERED that the case is DISMISSED.

MICHIGAN TAX TRIBUNAL

By: Kimbal R. Smith III

Entered: May 5, 2010
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