

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

Roe-Comm, Inc,  
Petitioner,

v

Michigan Department of Treasury,  
Respondent.

MTT Docket No. 422744  
Assessment No. R849254

Tribunal Judge Presiding  
B. D. Copping

ORDER DENYING RESPONDENT'S MOTION TO COMPEL

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY  
DISPOSITION

ORDER OF DISMISSAL

On March 27, 2012, Respondent filed a request that the Tribunal render summary disposition in the above-captioned case in favor of Respondent pursuant to MCR 2.116(C)(4) on the grounds that Petitioner has failed to pay the uncontested June 2005 and December 2007 assessments prior to filing this appeal, as required by MCL 205.22. As Petitioner failed to follow statutory procedures and pay the entire amount of the uncontested liability, prior to filing its appeal, Respondent argues that the Tribunal must dismiss the case under MCR 2.116(C)(4) for lack of jurisdiction.

Petitioner has not filed a response to Respondent's Motion for Summary Disposition.

The Tribunal, having given due consideration to the Motion and the case file, finds Respondent Treasury ("Treasury") moves for summary disposition pursuant to MCR 2.116(C)(4). This Court Rule states that a motion for summary disposition is appropriate where the "...court lacks jurisdiction of the subject matter." When presented with a motion for summary disposition pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties. MCR 2.116(G)(5). In addition, the evidence offered in support of or in opposition to a

party's motion will only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion. MCR 2.116(G)(6). A motion for summary disposition pursuant to MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43; 620 NW2d 546 (2000). Furthermore:

A motion under MCR 2.116(C)(4), alleging that the court lacks subject matter jurisdiction, raises an issue of law. The issue of subject matter jurisdiction may be raised at any time, even for the first time on appeal. *McCleese v Todd*, 232 Mich App 623, 627; 591 NW2d 375 (1998) (“Lack of subject matter jurisdiction may be raised at any time.”); *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997) (“Although the jurisdictional issue here was never resolved by the trial court, a challenge to subject-matter jurisdiction may be raised at any time, even for the first time on appeal.”). When a court lacks jurisdiction over the subject matter, any action it takes, other than to dismiss the case, is absolutely void. *McCleese*, 232 Mich App at 628; 591 NW2d at 377. The trial court's determination will be reviewed de novo by the appellate court to determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether affidavits and other proofs show that there was no genuine issue of material fact. *See Cork v Applebee's of Michigan, Inc*, 239 Mich App 311; 608 NW2d 62 (2000) (“When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show that there was no genuine issue of material fact.”); *Walker v Johnson & Johnson Vision Products, Inc*, 217 Mich App 705; 552 NW2d 679 (1996); *Faulkner v Flowers*, 206 Mich App 562; 522 NW2d 700 (1994); *Department of Natural Resources v Holloway Construction Co*, 191 Mich App 704; 478 NW2d 677 (1991). 1 Longhofer, Michigan Court Rules Practice § 2116.12, p 246A.

The specific statutory provision governing the filing of such appeals requires the payment of the entire amount of any uncontested liability before filing an appeal with the Tribunal. More specifically, MCL 205.22 provides, in relevant part, “...[a] taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax

tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision, or order. *The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal . . .*” (Emphasis added.)

Quoting from *Toaz v Dep’t of Treasury*, 280 Mich App at 462; 760 NW2d 325 (2008), a published Michigan Court of Appeals case, which had very similar facts to those found in the case:

The statutory language in this case is not ambiguous. MCL 205.22(1) clearly requires that “[t]he uncontested portion of an assessment . . . shall be paid as a prerequisite to appeal.” Although the words “shall,” “prerequisite,” and “paid” are not defined, undefined statutory words and phrases are construed according to their common and approved usage, unless such a construction would be inconsistent with the Legislature’s manifest intent. *ADVO-Systems, Inc v Dep’t of Treasury*, 186 Mich App 419, 424; 465 NW2d 349 (1990). The word “prerequisite” is defined as “required beforehand” and “something prerequisite; precondition.” *Random House Webster’s College Dictionary* (1997), p 1029. Among the definitions of the word “pay” is “to discharge or settle (a debt, obligation, etc.), as by transferring money or goods, or by doing something” and “to discharge a debt or obligation.” *Id.* at 957. The word “shall” generally indicates mandatory conduct. *Costa v Community Emergency Med Services, Inc*, 475 Mich 403, 409; 716 NW2d 236 (2006).

We must also consider the contextual setting of the words and phrases in the statute. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). Examined in context, the statutory phrase “uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal” is susceptible to only one reasonable interpretation. An aggrieved taxpayer must actually discharge the uncontested tax debt, by full payment, before appealing the contested portion of the tax assessment. The aggrieved taxpayer must pay the uncontested debt and file the written petition required in MCL 205.735 within 35 days to invoke the Tax Tribunal’s jurisdiction. A partial payment does not satisfy the statute, even when coupled with an allegation in the petition that the taxpayer lacks the financial resources to pay the full debt. Nor is a promise to pay the uncontested balance after the expiration of the 35 days sufficient to satisfy the statute. The Tax Tribunal does not have authority to grant a delayed

appeal. *Curis Big Boy v Dep't of Treasury*, 206 Mich App 139, 142; 520 NW2d 369 (1994).

Additionally, because MCL 205.22 is not ambiguous, we may not apply an “absurd results” rule in contravention of the clear terms of the statute. *Cairns v East Lansing*, 275 Mich App 102, 118; 738 NW2d 246 (2007). “It is not within the authority of the judiciary ‘to redetermine the Legislature’s choice or to independently assess what would be most fair or just or best public policy.’” *Lash v Traverse City*, 479 Mich 180, 197; 735 NW2d 628 (2007), quoting *Hanson v Mecosta Co Rd Comm'rs*, 465 Mich 492, 504; 638 NW2d 396 (2002).

Further, this Tribunal has held that if payment of the uncontested portion is not made in the manner required by MCL 205.22(1), then the “appeal has not been properly perfected...and is subject to dismissal with prejudice, without regard to the merits of the case . . . .” *Crosswinds Communities, Inc v Dep't of Treasury*, MTT Docket No. 297849 (2004).

Per Tribunal records, Petitioner Roe-Comm, Inc. (“Roe-Comm”) filed this appeal of Treasury’s determination on June 15, 2011, contesting only the denial of the SBT Small Business Credit for the June 2006 and June 2007 tax periods. After filing the appeal, Roe-Comm made a payment on June 22, 2011, in the amount of \$24,937.36, which was the exact amount of the outstanding liabilities for the outstanding assessments of tax and interest for the years ending June 2005 [\$4,465.26] and June 2006 [\$20,472.10]. These payments were credited to Roe-Comm’s account by Treasury on June 27, 2011, and eliminated the tax and interest due for the June 2005 period; reduced the amount of tax and interest due for the June 2006 period; and reduced the amount of interest due for the June 2007 and December 2007 periods.

Roe-Comm’s attempt to pay the entire outstanding liability for the June 2005 and June 2006 tax assessments, including interest, is documented on a copy of Treasury’s Monthly Statement of Account for the payment period ending May 31, 2011, which was submitted by Roe-Comm, where there is a handwritten notation that states, “[p]aid \$24,937.36 on 6/22 to cover 05 & 06 amounts.” There are also asterisks and lines drawn next to the 06/05 \$4,465.26 and 06/06 \$20,472.10 on the Assessment Summary section of the Monthly Statement of Account. Thus, the documentation provided by Roe-Comm clearly substantiates its intention to pay the 06/05 and 06/06 liabilities and not the 12/07 liability.

Roe-Comm did make an additional payment of \$10,000 on July 20, 2011, which was credited to Roe-Comm's account on July 27, 2011. None of this payment was credited against the outstanding 12/07 tax liability of \$1,220.

Given the above, Roe-Comm clearly failed to make any payments prior to the filing of its initial petition with the Tribunal, as required by MCL 205.22(1), and given that no payment relating to the uncontested December 2007 tax deficiency was ever made, the Tribunal lacks jurisdiction in this case under MCR 2.116(C)(4). As such, the Tribunal finds in favor of Respondent and grants the Motion for Summary Disposition under MCR 2.116(C)(4), as the pleadings have demonstrated that Respondent is entitled to judgment as a matter of law and that the affidavits and other proofs show that there was no genuine issue of material fact. Therefore,

On April 25, 2012, Treasury filed Motions requesting that the Tribunal (i) compel Petitioner to respond to discovery requests and require Petitioner to pay \$500 in costs for forcing Treasury to file its Motion to Compel and (ii) give immediate consideration to its Motion to Compel. The dismissal of the case, as indicated above, resolves the issues raised in the Motion. Further, the denial of the Motion also resolves Respondent's request for costs as Respondent is not a prevailing party relative to the Motion. See TTR 145. Therefore,

IT IS ORDERED that Respondent's Motion to Compel is DENIED.

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that the case is DISMISSED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: May 7, 2012

By: B.D. Copping