

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

West Michigan Tag & Label,  
Petitioner,

v

MTT Docket No. 16-005291

City of Kentwood,  
Respondent.

Tribunal Judge Presiding  
David B. Marmon

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

**INTRODUCTION**

On July 24, 2017, Respondent filed a motion requesting that the Tribunal enter summary disposition in its favor in the above-captioned case. More specifically, Respondent contends that because Petitioner failed to file its form 5728 by February 20, 2016, the Tribunal has no jurisdiction over this appeal.

On August 10, 2017, Petitioner filed a response to the Motion. Petitioner contends that because the legislature extended the filing deadline for Form 5728 to May 31, and because Respondent failed to act upon its filing, failed to give any notice as to its inaction, and failed to give notice as to the extended filing deadline, Petitioner's petition is properly before the Tribunal.

The Tribunal has reviewed the Motion, response, and the case file 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 it sent Petitioner “an assessment change notice on February 21, 2017,<sup>1</sup> (sic)” and that Petitioner was required to file an Affidavit and Statement for Eligible Manufacturing Personal Property and Essential Services Assessment ("Form 5278") with Respondent which must be received no later than February 20. Respondent relies upon STC Bulletin 7 of 2015 for the deadline, and the requirement of receipt by the deadline. As form 5278 was not received until February 26, 2016, no notification was provided to Petitioner, nor was Respondent required to so notify Petitioner. Finally, Respondent contends that because Form 5278's filing was untimely, the Tribunal lacks jurisdiction to hear this matter.<sup>2</sup>

### **PETITIONER'S CONTENTIONS**

In support of its response, Petitioner contends that Respondent, per Bulletin 7 has an affirmative duty to notify the taxpayer of its denial of an exemption, and that no such notice was ever provided to the taxpayer. Further, the legislature amended the statute in 2016, giving taxpayers until May 31, 2016 to file form 5278, yet Respondent failed to notify Petitioner of the extended deadline, nor did it bother to reconsider the original form, nor consider the form filed on February 26 as timely for the May 31 extended deadline. Petitioner concludes by arguing that because form 5278 was timely filed in lieu of the legislatively extended deadline, Petitioner's appeal should be considered timely.

### **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

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<sup>1</sup> Motion, ¶ 3.

<sup>2</sup> Respondent cites *Electronic Data Systems Corp v Twp of Flint*, 253 Mich App 538, 543; 656 NW2d 215 (2002) for this proposition.

motions.<sup>3</sup> In this case, Respondent moves for summary disposition for lack of subject matter jurisdiction. The standard for deciding motions for summary disposition for lack of subject matter jurisdiction is found under MCR 2.116(C)(4).

Dismissal under MCR 2.116(C)(4) is appropriate when the “court lacks jurisdiction of the subject matter.” When presented with a motion 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.<sup>4</sup> 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.”<sup>5</sup> A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.<sup>6</sup>

### **CONCLUSIONS OF LAW**

The Tribunal has carefully considered Respondent’s Motion under MCR 2.116 (C)(4), as well as Petitioner’s response and the case file, and finds that granting the Motion is warranted, although for reasons other than those argued by Respondent. Respondent argues that because Petitioner failed to file its form 5728 by the February deadline, the Tribunal does not have jurisdiction to hear this appeal. This argument is flawed for several reasons.

First, Respondent relies upon STC Bulletin 7 of 2015 for the February deadline. That bulletin was subsequently rescinded, because the statute setting the deadline was amended for the year at issue. Reliance upon that bulletin in support of its motion is therefore, of no effect. MCL

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<sup>3</sup> See TTR 215.

<sup>4</sup> *Id.*

<sup>5</sup> MCR 2.116(G)(6).

<sup>6</sup> See *Citizens for Common Sense in Gov’t v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).

211.9n was amended by Act 108 of 2016, and put into immediate effect on May 6, 2016.

Subsection 6 of this statute states as follows:

(6) For 2016 only, if an owner of qualified previously existing personal property did not file form 5278 by February 22, 2016 or filed an incomplete form 5278 by February 22, 2016 to claim the exemption under this section with the assessor of the city or township in which the qualified previously existing personal property is located, that owner may file form 5278 with the assessor of the city or township in which the qualified previously existing personal property is located no later than May 31, 2016. If the assessor determines the property qualifies for the exemption under this section, the assessor shall immediately amend the assessment roll to reflect the exemption. The assessor of the township or city shall transmit the affidavits filed, or the information contained in the affidavits filed, under this section, and other parcel information required by the department of treasury, to the department of treasury in the form and in the manner prescribed by the department of treasury no later than June 7, 2016. The owner shall still be required to meet all deadlines required under section 7 of the state essential services assessment act, 2014 PA 92, MCL 211.1057. If the assessor of the township or city believes that personal property for which an affidavit claiming an exemption filed under this subsection by May 31, 2016 is not qualified previously existing personal property, the assessor may deny that claim for exemption by notifying the person that filed the affidavit in writing of the reason for the denial and advising the person that the denial may be appealed to the Michigan tax tribunal within 35 days of the date of the denial.

Clearly, under the amended statute in effect in 2016, the deadline for filing form 5728 was extended to May 31, 2017. It is unclear from the facts as to whether Respondent returned the filed form as late, or simply threw it in the trash. In either case, Respondent had a duty to notify Petitioner that the application was not accepted, and has failed to allege in its motion that it gave such notification. Alternatively, Respondent could have accepted the application as timely under the revised deadline. Accordingly, Respondent's argument that we lack jurisdiction to hear this appeal because Petitioner missed the filing deadline for its form 5728 is incorrect, because in fact, Petitioner's filing of this form was filed over three months prior to the revised deadline.

Moreover, Respondent's argument that the Tribunal lacks jurisdiction to hear an appeal of this tax, based upon the filing deadline for 5728 is illogical. While filing deadlines have been

held to be jurisdictional,<sup>7</sup> the filing deadline referred to is the deadline for petitions to be filed with the Michigan Tax Tribunal. The applicable deadline in this case can be found in MCL 205.735a. Specifically, subsection (6) states in relevant part:

In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition *within 35 days* after the final decision, ruling, or determination. An appeal of a contested tax bill shall be made *within 60 days after mailing by the assessment district treasurer and the appeal is limited solely to correcting arithmetic errors or mistakes and is not a basis of appeal as to disputes of valuation of the property, the property's exempt status, or the property's equalized value resulting from equalization of its assessment by the county board of commissioners or the state tax commission.* [Emphasis added].

Petitioner's argument that its appeal is timely implies that Respondent's failure to act on its filing of form 5728 was in of itself a decision, appealable to the Tribunal. There is some authority that a Respondent's failure to act on an application is an appealable decision. The Court of Appeals has recently held:

A local assessor's failure to approve or deny an application for an exemption under MCL 211.7d in the same year that it is made constitutes a de facto denial of the exemption for the following tax year, which decision the Tribunal may review as a final decision<sup>8</sup>

However, in the present case, Petitioner was placed on notice that its application was not being accepted when it was issued its personal property tax bill on July 1, 2016. In paragraph 8 of its petition, Petitioner states in relevant part:

No notice was provided to the Petitioner as the statute requires *and instead the City of Kentwood processed the normal assessment and tax bill.* It was not until Petitioner went on line to make a payment that it found out that it had not been granted the tax relief provided for in the statutes. [Emphasis added].

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<sup>7</sup> See *Electronic Data Systems*, cited above by Respondent.

<sup>8</sup> See *Clinton Twp Volunteers of America Elderly Housing Inc v Clinton Twp*, per curiam unpublished decision of the Court of Appeals issued March 1, 2019 (Docket No 324927).

Accordingly, Petitioner acknowledges that it received notice that its personal property was not granted an exemption. In the present case, when Petitioner received its summer tax bill for over \$10,000, it was placed on notice that no exemption was in place under MCL 211.9n. Summer tax bills are issued on July 1 of each year.<sup>9</sup> From that date, the 35 day appeal period commenced. Even if Petitioner were to argue that it had 60 days from the issuance of the tax bill in which to appeal,<sup>10</sup> Petitioner filed its petition on September 14, 2016, which is 75 days from July 1, 2016; well after the statutory deadline. Accordingly, the Tribunal's jurisdiction was not timely invoked, and dismissal is therefore, proper.

Petitioner argues that Respondent failed to give various notices it was required to give by statute, and therefore we somehow have jurisdiction. Specifically, Petitioner's allegation that it did not have notice that it was not granted an exemption until it decided to view its exemption on line, if accepted, would allow a Petitioner to determine its deadline for filing an appeal. The Tribunal rejects this argument because Petitioner was specifically placed on notice by the issuance by Respondent of the summer tax bill. Further, property tax procedure is governed by various statutory deadlines.<sup>11</sup> Such a regimen is necessary to allow municipalities to prepare their annual budgets. In any case, as pointed out by the Court of Appeals in *Electronic Data Systems*, Tribunal is bound by deadlines. The Court of Appeals stated:

We reject petitioner's arguments that the Tax Tribunal gave a "hypertechnical" reading to the statute and that its construction and application of the statute is contrary to the spirit and purpose of the act. Our Supreme Court has made clear that where the statute is clear and unambiguous, as the statute is here with regard to filing a petition by certified mail, the statute must be applied as written and no further construction is required or permitted. *Id.* Therefore, the Tax Tribunal did

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<sup>9</sup> MCL 211.44a(4).

<sup>10</sup> Per MCL 205.735a(6), the 60 day period is for arithmetic errors, and specifically excludes contesting the issue of exemption.

<sup>11</sup> MCL 205.735a sets forth other deadlines as well for various kinds of appeals of various kinds of property.

not commit an error of law or adopt a wrong principle by applying a clearly and unambiguously worded statute to the case before it.<sup>12</sup>

As to any equitable powers the Tribunal may have to waive deadlines, the Court of Appeals has also made it clear that we have none:

Further, the Tax Tribunal did not err by “refusing” to exercise its equitable powers as petitioner maintains. The Tax Tribunal's powers are limited to those authorized by statute, M.C.L. § 205.732; *Federal–Mogul Corp. v. Dep't of Treasury*, 161 Mich.App. 346, 359, 411 N.W.2d 169 (1987), and the Tax Tribunal does not have powers of equity, *id.* Thus, the Tax Tribunal does not have the authority to grant a request for a delayed appeal. *Curis Big Boy, Inc. v. Dep't of Treasury*, 206 Mich.App. 139, 142, 520 N.W.2d 369 (1994).<sup>13</sup>

Accordingly, because the Tribunal’s jurisdiction was not timely invoked by Petitioner, we may not balance any equities and ignore the statutory deadline upon which appeals must be filed. In the present case, Petitioner had a duty to file a petition with the Tribunal within 35 days of the issuance of the summer tax bill, and failed to do so until 75 days had elapsed. Accordingly, the Tribunal has no choice but to grant Respondent’s motion for summary disposition on the grounds of lack of jurisdiction.

### **JUDGMENT**

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

IT IS FURTHER ORDERED that the case is DISMISSED.

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.

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<sup>12</sup> *Electronic Data Systems*, 253 Mich App at 545-546.

<sup>13</sup> *Id.*, at 547-548.

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>14</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>15</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>16</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>17</sup>

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>18</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>19</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>20</sup>

Entered: August 18, 2017

By David B. Marmon

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<sup>14</sup> See TTR 261 and 257.

<sup>15</sup> See TTR 217 and 267.

<sup>16</sup> See TTR 261 and 225.

<sup>17</sup> See TTR 261 and 257.

<sup>18</sup> See MCL 205.753 and MCR 7.204.

<sup>19</sup> See TTR 213.

<sup>20</sup> See TTR 217 and 267.