Andersons Albion Ethanol LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-004832

Michigan Department of Treasury,
Respondent.

Presiding Judge
Steven M. Bieda

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER OF DISMISSAL

INTRODUCTION

Petitioner filed this appeal disputing Respondent's denial of its claim for a refund relative to its 2010 Michigan Business Tax ("MBT") return.

On January 19, 2021, Respondent filed a motion requesting that the Tribunal enter summary disposition in its favor and dismiss the above-captioned case. In the motion, which was filed pursuant to MCR 2.116(C)(4), (C)(8) and (C)(10), Respondent contends that the Tribunal lacks subject matter jurisdiction over Petitioner's appeal and that its claims are barred by the doctrine of res judicata. As such, Respondent is entitled to judgment as a matter of law.

Petitioner filed a response in opposition to Respondent's motion on February 9, 2021.

RESPONDENT'S CONTENTIONS

Respondent contends that it is entitled to judgment as a matter of law because Petitioner's refund request constitutes a collateral attack on Final Assessment No. TN69081, which was issued on May 29, 2014. The assessment reflected the additional taxes due as a result of Respondent's adjustment of the Renaissance Zone Credit ("RZC") on Petitioner's 2010 MBT return. Petitioner appealed the assessment to the Tribunal, and it was ultimately affirmed by the Michigan Court of Appeals in a published opinion. Petitioner then filed an amended MBT return for the 2010 tax year, seeking to recompute the previously appealed RZC. This collateral attack on the assessment is precluded by MCL 205.22(4). A collateral attack also falls outside the "class of cases" over which the Tribunal has subject-matter jurisdiction, and such appeal is therefore not reviewable, and the Tribunal lacks authority to hear the appeal or take any action aside from dismissing the case. Moreover, because Petitioner's claims were already litigated,

they are barred by res judicata. The prior case was decided on the merits and the claims Petitioner raises in this appeal could have been resolved in that case.

PETITIONER'S CONTENTIONS

Petitioner contends that Respondent is not entitled to judgement as a matter of law because Petitioner is not barred from filing an amended return to correct a factual error in its 2010 MBT return—the mistaken belief that it had no payroll for MBT purposes—because the legal issue of how the RZC should be calculated when a taxpayer has no payroll has been previously litigated. The prior assessment did not address the question of whether Petitioner correctly reported a zero payroll factor, and as such, the finality of that assessment does not preclude the subsequent amendment of its 2010 MBT return to correctly reflect its payroll. Petitioner also has a legal obligation to amend its return to report facts accurately and apply the law to them correctly. Further, Petitioner's claims are not barred by the doctrine of res judicata because they were not and could not have been raised in the first matter. The factual error was not discovered until after the litigation related to the original return was concluded, and therefore it was not possible to address the impact of these facts in the prior litigation.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition, thus the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[1]

A. Motions for Summary Disposition 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.[2] 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 under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.[3]

B. Motions for Summary Disposition under MCR 2.116(C)(8).

MCR 2.116(C)(8) provides for summary disposition when "the opposing party has failed to state a claim on which relief can be granted."[4] A motion under this rule "tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as

[1] See TTR 215.
[2] *Id.*
[3] See *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich App 43 (2000).
[4] *Id*.

true and construed in a light most favorable to the nonmovant."[5] *Such motions "*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." [6] Further, "when deciding a motion brought under [MCR 2.116(C)(8)], a court considers only the pleadings."[7]

C. Motions for Summary Disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."[8] The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,[9] provided the following explanation of MCR 2.116(C)(10):

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
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> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless, and the moving party is entitled to summary judgment as a matter of law.
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> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
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> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific

[5] *Maiden v Rozwood*, 461 Mich 109, 119-20 (1999).
[6] *Id*. (citations omitted).
[7] *Id*. (citations omitted).
[8] *Id*.
[9] *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).

> facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[10]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[11] In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary judgment."[12] "Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial."[13]

CONCLUSIONS OF LAW

The Tribunal has considered the motion, response, and the case file, and finds that Respondent issued Final Assessment No. TN69081on May 29, 2014. The assessment reflected the additional taxes due as a result of Respondent's adjustment of the RZC on Petitioner's 2010 MBT return. Petitioner timely appealed the assessment to the Tribunal on June 30, 2014, which was assigned Docket No. 14-005289, and the Tribunal entered an order granting summary disposition in favor of Petitioner on March 3, 2015. Following the denial of its motion for reconsideration on May 21, 2015, Respondent appealed the Tribunal's decision to the Michigan Court of Appeals. The Court of Appeals reversed and remanded on September 13, 2016, finding that the Tribunal should have granted summary disposition in favor of Respondent.[14] The Court of Appeals denied reconsideration on November 4, 2016, and Petitioner filed an application for leave to appeal with the Michigan Supreme Court. The Supreme Court denied the application for leave to appeal on June 7, 2017,[15] and the record was returned to the Tribunal the same day. The Tribunal entered a Final Opinion and Judgment on Remand on June 14, 2017.

On August 14, 2017, Petitioner filed an amended MBT return for the 2010 tax year, seeking to recompute the previously appealed RZC based on factual changes to the payroll factor. Specifically, Petitioner sought to increase the payroll for services performed within the renaissance zone and in Michigan from $0 to $2,787,557, which increased the credit from $257,290 to $525,275 and would have resulted in a refund of $29,671. Respondent issued a notice denying the amended return on September 28, 2018. The notice was reissued on January 13, 2020 because the original notice was

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[10] *Id*. at 361-363. (Citations omitted.)
[11] *West v General Motors Corp*, 469 Mich 177 (2003).
[12] *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 1 (1994).
[13] *Id.*
[14] *Andersons Albion Ethanol, LLC v Dep't of Treasury*, 317 Mich App 208 (2016).
[15] *Andersons Albion Ethanol, LLC v Dep't of Treasury*, 500 Mich 1009 (2017). The Supreme Court denied reconsideration of its June 7, 2017 order on September 12, 2017. *Andersons Albion Ethanol, LLC v Dep't of Treasury*, 501 Mich 866 (2017).

not sent to Petitioner's authorized representative, as required by MCL 205.8. Petitioner filed a request for informal conference on March 13, 2020, and an informal conference was held on July 22, 2020. Respondent issued a Decision and Order of Determination adopting the Informal Conference Recommendation on October 8, 2020 and denied Petitioner's claim for a refund. Petitioner timely appealed the Decision and Order of Determination to the Tribunal on December 7, 2020. Respondent filed its motion for summary disposition in lieu of an answer on January 19, 2021.[16]

With respect to Respondent's motion under MCR 2.116(C)(4), the Tribunal finds that the motion would have been more appropriately filed pursuant to MCR 2.116(C)(7), which provides for summary disposition when "entry of judgment, dismissal of the action, or other relief is appropriate because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action."[17] Subject-matter jurisdiction is defined as "jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things. — Also termed *jurisdiction of the subject matter*; *jurisdiction of the cause*; *jurisdiction over the action*; *jurisdiction ratione materiae.* Cf. *personal jurisdiction*."[18] Pursuant to MCL 205.731, "The tribunal has exclusive and original jurisdiction" over proceedings "for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state," as well as those "for a refund or redetermination of a tax levied under the property tax laws of this state."[19] The Tribunal also has jurisdiction over "any other proceeding provided by law,"[20] and MCL 205.22 states that "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 60 days . . . ."[21] The Tribunal has jurisdiction over the nature and the type of relief sought in this case and Respondent's contention that MCL 205.22(4) and (5) strip the Tribunal of that jurisdiction is without merit. Indeed, Respondent's reliance on MCL 205.22(4) and (5) is misplaced, as those sections are specific to assessments, decisions, and orders that are not appealed to the Tribunal or the Court of Claims within the time period set forth in subsection (1).[22] Final Assessment No.

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[16] See TTR 229.
[17] *Id*.
[18] JURISDICTION, Black's Law Dictionary (10th ed. 2014).
[19] *Id*.
[20] *Id*.
[21] MCL 205.22(1).
[22] MCL 205.22(4) states that "the assessment, decision, or order of the department, **if not appealed in accordance with this section**, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack." *Id*. (emphasis added). MCL 205.22(5) states that "an assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment **unless the aggrieved person has appealed the assessment in the manner provided by this section**." *Id*. (emphasis added).

TN69081 was timely appealed to the Tribunal, and as a result, subsections (4) and (5) do not apply.

Notwithstanding the above, the assessment was final and subject to enforcement in accordance with the Court of Appeals decision, following the Supreme Court's denial of the application for leave to appeal on June 7, 2017.[23] And despite Petitioner's assertion to the contrary, its refund request is barred not only by the doctrine of res judicata, but also by the statute of limitations set forth in the Revenue Act. With respect to the former, the Michigan Supreme Court has held as follows:

> The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.[24]

The prior action in this case was decided on the merits and both actions involve the same parties.[25] As such, the sole question in determining whether Petitioner's claims are barred by res judicata is whether the matter in this case was or could have been resolved in the first. Petitioner correctly notes that the specific issue presented in this case was not addressed in the prior appeal, which addressed only how the RZC should be calculated when the taxpayer has no payroll services in the renaissance zone or in Michigan. As for whether the claims could have been raised in the prior action, "the 'transactional' test provides that 'the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief.' "[26] " 'Whether a factual grouping constitutes a transaction for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in *time, space, origin, or motivation,* [and] whether they form a convenient trial unit . . . .' "[27] Petitioner contends that the claims in this case could not have been resolved in the prior action because it proceeded on the facts believed to be correct at that time, and it was only after that action had concluded that Petitioner discovered the facts to be inaccurate. Petitioner contends that because the correct facts were not known at the time of the prior action, the required connection in time, space, or origin did not exist. The Tribunal disagrees. Both cases involve the same tax, the same tax credit, and the same tax year. Thus, they are related in time, space, origin, and motivation. Further, Petitioner knew or should have known by exercising reasonable diligence of the alleged factual error at the time of the prior action.

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[23] See MCR 7.305(H)(3).
[24] *Adair v State*, 470 Mich 105, 121 (2004) (citations omitted).
[25] See *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412 (2007).
[26] *Adair v State*, 470 Mich at 124.
[27] *Id*. at 125.

Even assuming that Petitioner's claims were not barred by the doctrine of res judicata, a refund claim of overpaid MBT estimates is made pursuant to MCL 205.30(2), which states that "a taxpayer who paid a tax that the taxpayer claims is not due may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a [of the Revenue Act]."[28] Pursuant to MCL 205.27a, "The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return."[29] Petitioner's 2010 MBT return was due on December 31, 2010, and the statute of limitations for claiming a refund therefore expired on December 31, 2014.[30] Petitioner did not file its amended return until August 14, 2017, more than two years after this date.

Given the above, the Tribunal finds that Respondent is entitled to summary disposition pursuant to MCR 2.116(7). Accepting the contents of the petition as true and considering all of the documentary evidence on record in a light most favorable to Petitioner, the claims presented in this appeal are barred by the doctrine of res judicata and the statute of limitations.[31]

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.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision. 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. 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

[28] *Id*.
[29] MCL 205.27a(2).
[30] See MCL 208.1505(1).
[31] See *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678 (2008).

must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

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." A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal. The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By 

Entered: March 10, 2021
ejg