

STATE OF MICHIGAN
COURT OF APPEALS

RAZEEN, INC, and S & R REAL PROPERTIES,

Petitioners-Appellants,

v

CITY OF WARREN,

Respondent-Appellee.

UNPUBLISHED

July 23, 2020

No. 350310

Tax Tribunal

LC No. 17-001673-TT

Before: METER, P.J., and BECKERING and O'BRIEN, JJ.

PER CURIAM.

Petitioners, Razeen, Inc., and S & R Real Properties, appeal from a final order of the Michigan Tax Tribunal denying their request for a commercial personal property tax exemption under MCL 211.9o for the tax years 2017 and 2018. For the reasons stated below, we affirm the tribunal's decision.

I. RELEVANT FACTS AND PROCEEDINGS

Petitioner S & R Real Properties (S & R) owns property identified as parcel number 99-02-208-385 and located at 22932 Groesbeck Highway in Warren, Michigan. S & R also owns the gas station and convenience store located on that property. Petitioner Razeen, Inc. (Razeen), leases both the real and personal property and operates the gas station. Sabur Ghazi owns Razeen, and he and his wife, Rokshana Ghazi, own S & R. Neither petitioner owns any other real or personal property in the City of Warren. Petitioners¹ timely filed an affidavit with respondent attesting that the true cash value of all their industrial and commercial personal property in the City of Warren was less than \$80,000, and claiming the tax exemption allowed by MCL 211.9o for the tax years 2017 and 2018. Respondent denied the exemption, and petitioners appealed to the board of review,

¹ Razeen submitted the affidavit, even though S & R owns the property and MCL 211.9o requires the owner of the property to file the affidavit seeking a tax exemption. MCL 211.9o(1).

which denied their appeal. Petitioners then appealed the board's denial of their request in the Michigan Tax Tribunal, which held a full hearing on petitioner's appeal on January 8, 2019.²

The thrust of petitioners' argument was that all of the commercial and industrial property at the subject location had been appraised, and its total value was less than \$80,000. Boulus Ghraib, a real estate appraiser who prepared the appraisal of the personal property at issue, was admitted and testified as petitioners' expert in personal property appraisal. Ghraib testified briefly on direct examination that the depreciated value of the convenience store equipment was \$11,073, and the depreciated value of the gas station equipment was \$23,405; thus, the total depreciated value of the industrial and commercial personal property at the subject location was only \$34,478.

Respondent's attorney cross-examined Ghraib extensively about his valuation methodology. Ghraib testified that he believed that almost all of the commercial personal property went into use in 1997. He estimated the original cost of the personal property using the Marshall and Swift cost estimating guide and "market inputs". Ghraib conceded that there were certain items he did not appraise, such as property provided by vendors Pepsi and Frito-Lay, and that he assigned value based on categories of items rather than on each particular item. For example, he lumped together all of the property in the office, which he recalled as a chair, small TV, and "probably a fax machine," and gave it a total value of \$600, and instead of providing a separate value for each type of display rack, he measured the total footage of racks and valued it accordingly. Because he believed that all of the property had exceeded its economic life but still was in working condition, Ghraib depreciated the property 85% on a straight-line basis to arrive at the total value.³ He surmised that, as a further consequence of the property having exceeded its economic life, the value of the personal property when he conducted his appraisal in May 2018 was the same as the value of the property on December 31, 2016 and December 31, 2017, for the tax years 2017 and 2018 respectively.

Petitioners also called Mr. Ghazi as their witness. He testified that he owned several rental units in the City of Warren, some of which came furnished with a stove, oven, and refrigerator. Asked if he had informed Ghraib of these units and the personal property in them, Mr. Ghazi said that it never became an issue. Mr. Ghazi also testified to various items of commercial personal

² Petitioners raised two counts in their petition. In Count I, they appealed the board of review's denial of their industrial and commercial personal property exemption. In Count II, they appealed respondent's assessment of their property for tax years 2017 and 2018, claiming that the taxable value of the property exceeded 50% of the property's true cash value in violation of MCL 211.27 and 211.27a. Although petitioners never formally withdrew their challenge to respondent's assessment of their property, neither party raised it at the tax tribunal's January 8, 2019 hearing on the petition. Therefore, the tax tribunal treated the assessment issue as abandoned. Petitioners have not challenged the assessment on appeal in this Court.

³ Ghraib testified that for items that have exceeded their economic life, Martin and Swift provides a salvage value of 10%. But because most of the items were still in working condition, Ghraib gave them a 15% value.

property at the subject location that he did not own, but that he possessed and controlled to the extent that he could have the owners of the property remove it if he no longer wanted it. Included in this category was property such as Pepsi, ATM, lottery, and electronic benefit transfer (EBT) machines, and chips racks.

Michael Fontana, an assessing administrator with the City of Warren, was admitted and testified as respondent's expert in the assessment of personal property for tax purposes and the tax exemption allowed by MCL 211.9o. Fontana testified that petitioners had not reported the value of all the personal property they or a related entity owned, leased, or possessed in the City of Warren, and had not properly calculated the true cash value of the property they did report. With regard to the personal property in Mr. Ghazi's rental units, Fontana testified that the statute at issue requires petitioners to include the value of such property when submitting their request for a tax exemption.⁴ Fontana also testified that the statute required petitioners to report the value of the commercial personal property at the subject location that Ghraib photographed for his appraisal report, but did not include in his valuation, such as the security cameras and the monument sign.⁵ In addition to these items, Fontana's December 13, 2018 visit to the convenience store and gas station revealed a number of other items not accounted for in Ghraib's appraisal. These included window signs, three exterior signs, a Waste Management 8-yard dumpster, a floor safe, a propane storage tank, a Manitowoc ice machine, and a fuel tank monitoring system. Fontana testified that all of this property should have been included in determining petitioners' eligibility for the tax exemption, and without its inclusion, a proper determination of the true cash value of petitioners' personal property could not be made.

Fontana also indicated that, in addition to being incomplete, Ghraib's assessment of the personal property was unreliable because it was based on actual age, not effective age, and that calculation of effective age required proper consideration of the actual condition of the property, including the wear and tear to the property and its maintenance. He concluded that Ghraib had not accurately catalogued, and petitioners had not accurately reported, every item of personal property "owned by, leased to or in the possession of" petitioners or a related entity as of the relevant tax dates, and that without a complete list of all such personal property, it was not possible for petitioners to credibly claim that the total value of their personal property is less than \$80,000.

The tribunal issued a proposed opinion and judgment on May 14, 2019, setting forth its findings of fact and conclusions of law and summarizing the respective arguments of the parties. The tribunal found credible the testimony of respondent's expert that petitioners' appraisal did not include all of the personal property at the subject location and that this failure precluded a

⁴ Fontana explained that petitioners did not have to pay taxes on the commercial personal property in Mr. Ghazi's rental units. However, because he was a "related entity" as defined by MCL 211.90(8)(f), the value of the rental personal property had to be included in petitioners' list of property for purposes of determining whether they were eligible for the small business personal property tax exemption.

⁵ By "monument sign," Fontana meant the canopy sign displaying the gas station's logo, under which are arrayed three panels showing the prices of gasoline.

determination as to whether petitioners qualified for the small business personal property exemption. The tribunal concluded:

Petitioners did not submit sufficient or reliable evidence to establish their entitlement to the requested exemption. More specifically, Petitioners' appraisal not only failed to include all of the personal property at issue but also failed to include or otherwise address all of the personal property owned or in the possession of Petitioners or Mr. & Mrs. Ghazi (i.e., a related entity) located in the City of Warren. Further, the appraisal also failed to properly value the personal property actually included in the appraisal, as indicated herein. As a result, Petitioners have failed to demonstrate that the [true cash value] of the "eligible personal property" is "less than \$80,000" for either tax year at issue.

After neither party filed objections to the tribunal's proposed opinion and final order, the tribunal adopted the proposed opinion and judgment as its final decision in the matter.

Subsequently, petitioners filed a motion for reconsideration, contending that they were unable to provide the information necessary to prove their entitlement to the exemption due to issues with the discovery process, that the tribunal did not come to an independent value conclusion, that the tribunal failed to properly apply the definition of "possession," and that the tribunal improperly admitted and used respondent's evidence. In denying petitioners' motion, the tribunal concluded, among other things, that petitioners failed to show that commercial personal property such as the ATM, EBT, and Lotto machines, and the appliances in the rental units were not in the possession of a related entity for purposes of MCL 211.90, and that they had failed to demonstrate a palpable error relative to the final opinion and judgment that warranted the tribunal's reconsideration. This appeal followed.

II. DISCUSSION

The gravamen of petitioners' argument on appeal is that once they submitted affidavits claiming the personal property tax exemption, the burden shifted to respondent to prove that petitioners were not entitled to the exemption. Because respondent did not provide any explanation or supporting evidence when it denied petitioners' request for the exemption, or when asked to do so during discovery, respondent failed to meet its burden. Accordingly, the tribunal should have concluded that petitioners were entitled to the exemption. Petitioners' argument misapprehends the law.

A. STANDARD OF REVIEW

This Court's review of decisions of the Michigan Tax Tribunal is very limited. *President Inn Properties, LLC v City of Grand Rapids*, 291 Mich App 625, 630; 806 NW2d 342 (2011). In the absence of fraud, which petitioner has not alleged, our review "is limited to determining whether the tribunal made an error of law or adopted a wrong principle; the factual findings of the tribunal are final, provided that they are supported by competent and substantial evidence." *Id.* at 631, quoting *Antisdale v. Galesburg*, 420 Mich 265, 277, 362 NW2d 632 (1984). "In an appeal from an order of the Tax Tribunal, the appellant bears the burden of proof." *Podmajersky v Dept of Treasury*, 302 Mich App 153, 162; 838 NW2d 195, 200 (2013).

B. ANALYSIS

Pursuant to MCL 2.119*o*, an owner of eligible personal property may claim a tax exemption by filing a statement with the local tax collecting unit in which the eligible personal property is located . . .attest[ing] that the combined true cash value of all industrial personal property and commercial personal property in that local tax collecting unit owned by, leased to, or in the possession of that owner or a related entity on December 31 of the immediately preceding year is less than \$80,000.00. [MCL 2.11.9*o*(1).]

The statute defines “eligible personal property” in relevant part as industrial and commercial personal property “owned by, leased to, or in the possession of the person claiming an exemption under [MCL 211.9*o*] or a related entity on December 31 of the immediately preceding year[.]” the combined value of which is less than \$80,000.00. MCL 2.119*o*(8)(c)(i)-(ii). “ ‘Related entity’ means a person that, directly or indirectly, controls, is controlled by, or is under common control with the person claiming an exemption under this section.” MCL 211.9*o*(8)(f).

The tribunal denied petitioners’ request for an exemption based on the unreliability of petitioners’ appraisal of the true cash value of their personal property. The tribunal found the appraisal unreliable because of the methodology Ghraib used to determine the true cash value of the personal property at the subject location as well as the failure to include in the calculation the value of all of the relevant property.

The tribunal summarized Ghraib’s methodology as “estimated versus historical original cost and estimated depreciation based on economic life versus effective age,” and concluded that this methodology was “contrary to accepted appraisal practices[.]” The tribunal identified and defined the “three types or causes of appraisal depreciation traditionally recognized by appraisers,” stated that “[o]nce the proper level of current cost new has been determined, deductions must be made for all forms of depreciation[.]” and then briefly described how the different types of depreciation were calculated. By comparison, the tribunal found Ghraib’s “total depreciation value” an unreliable indicator of value, noting that Ghraib failed to: (1) consider all of the property owned by petitioners at the subject location; (2) determine the effective age of each item; (3) determine whether any items suffered from technological obsolescence; (4) give the actual original cost new of each item based on fixed asset records or documents or otherwise “support[] his estimated cost new for each item”; and (5) “depreciate each item separately based on the item’s effective age rather than utilizing a straight-line unsupported quasi-salvage value depreciation on all of the items or ‘category of items’ (i.e., office equipment, etc.).

Ghraib’s testimony on cross-examination, as well as the written report of his appraisal, which petitioners admitted into evidence, provide competent and substantial support of the tribunal’s findings. As previously indicated, Ghraib testified that there was some property at the subject location he did not factor into his appraisal, that he treated all of the property as beyond its economic life, that rather than use the original acquisition cost of the property, he estimated the cost new of categories of items using Marshall and Swift, and that he depreciated all of the property by 85% on a straight-line basis. Given that petitioners have not challenged the tribunal’s

observations regarding what constitutes acceptable appraisal practices, and considering the competent and substantial evidence that supports the tribunal's findings regarding Ghraib's appraisal methodology, we have no basis to conclude that the tribunal adopted a wrong principle or to overturn the tribunal's factual findings.

The tribunal also denied petitioners' exemption based on petitioners' failure to include the value of all of the relevant property in their calculation. Testimony from Ghraib, Mr. Ghazi, and Fontana provides competent and substantial support for the tribunal's relevant factual findings, and the tribunal did not wrongly interpret MCL 211.9o as calling for the inclusion of the omitted and overlooked property.

Ghraib testified that he did not appraise the security camera or the property provided by various vendors, such as Pepsi and Frito Lay, and that he did not ask Mr. Ghazi if he owned any other property in Warren because he had been hired only to assess the value of the property at the convenience store and gas station. Mr. Ghazi testified that he owned a number of rental properties in the City of Warren, some of which came furnished with a stove, oven, and refrigerator, but that these properties never became an issue for the appraisal. Fontana, opined that not only did MCL 211.9o call for inclusion of the value of the commercial personal property in Mr. Ghazi's rental units when determining whether petitioners were entitled to the exemption, but it also required including the value of store items such as the Pepsi, electronic benefits transfer (EBT), and lottery machines, and the chips racks. Fontana also testified to additional property he observed at the subject location that Ghraib had not mentioned but that should have been included in determining the true cash value of petitioners' industrial and commercial personal property. Thus, competent and substantive record evidence supports the tribunal's conclusion that petitioners did not include all of the personal property they or a related entity owned in determining their eligibility for a tax exemption under MCL 211.9o.

Further, the plain language of MCL 211.9o supports the tribunal's conclusion that the value of the omitted commercial personal property should have been included to determine whether the combined true cash value of petitioners' personal property was less than \$80,000. Petitioners argued in the tribunal that if all they had was a possessory interest in certain property, they did not own or control the property and, therefore, their possessory interest should not affect the exemption. However, MCL 211.9o(8)(c) identifies the personal property eligible for the exemption in part as the industrial or commercial property in the local tax collecting unit owned by, leased by, *or in the possession of* the person claiming the exemption" MCL 211.9o(1). Thus, the value of commercial personal property that petitioners or related entities possess is relevant to determining whether petitioners meet the criteria for the exemption.

Moreover, MCL 211.9o supports the conclusion that Mr. Ghazi is a "related entity" to petitioners and, therefore, that the value of the appliances in Mr. Ghazi's rental units should have been included in the combined true cash value of petitioners' commercial personal property. Mr. Ghazi testified that he owns petitioner Razeen Inc., and 70% of petitioner S & R Real Properties, while his wife owns the remaining 30%. Thus, Mr. Ghazi "directly or indirectly controls . . . the person claiming an exemption under [MCL 211.9o,]" and is a "related entity" pursuant to MCL 211.9o(8)(f). The statute defines "person" as an individual, partnership, corporation, association, limited liability company, or any other legal entity." MCL 2.11.9o(8)(e).

Petitioners argue that they are entitled to the exemption because respondent failed to meet its burden to prove that the combined value of their personal property exceeded \$80,000. However, petitioners cite no authority for their assumption that submission of the statement required by MCL 211.9o creates a presumption of entitlement to the exemption that respondent must rebut before it denies the exemption. If the assessor of the local tax collecting unit believes that the personal property in a timely and properly filed statement is not “eligible personal property,” i.e., that its combined true cash value exceeds \$80,000, the assessor “may deny the claim for exemption by notifying the person that filed the statement in writing of the reason for the denial and advising the person that the denial may be appealed to the board of review under [MCL 211.30] during that tax year. MCL 211.9o(6). Here, the evidence shows that respondent notified petitioners using a form that adequately fulfilled respondent’s statutory obligation to inform petitioners that their request for an exemption was denied and of their right to appeal the denial to the board of review,⁶ Petitioners cite no authority obligating respondent to independently appraise petitioners’ commercial personal property before denying their request. To the contrary, the statute clearly places the obligation of proving entitlement to the exemption on the person seeking the exemption. See MCL 211.22(2)⁷; see also *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002) (indicating that the person requesting an exemption must prove entitlement to the exemption by a preponderance of the evidence).

The tribunal concluded that petitioners did not meet their burden to prove that they were entitled to the exemption allowed by MCL 211.9o because they failed to provide a reliable appraisal showing that the combined true cash value of the commercial personal property that they or a related entity owned, leased, or possessed in the City of Warren was less than \$80,000. We agree. Competent and substantial record evidence supports the tribunal’s factual findings that petitioners omitted from their calculation certain personal property at the subject location as well as personal property in condominium rental units owned by Mr. Ghazi, and that the value of the omitted or overlooked property must be included in order to properly determine petitioners’ eligibility for the exemption. Further, petitioners have not challenged the tribunal’s observations regarding accepted appraisal practices, and competent and substantial evidence supports the tribunal’s conclusion that petitioners’ appraisal was not the product of such practices. Based on

⁶ The denial is for tax year 2017. Petitioners’ have not argued that they did not receive a similar denial for tax year 2018. Their point seems to be that respondent did not appraise the personal property in the condominium units before concluding that the value of that personal property, when combined with the value of the personal property at the subject location, equaled or exceeded \$80,000.

⁷ A person who files an affidavit seeking an exemption for eligible person property pursuant to MCL 211.9o must also “maintain adequate books and records relating to the description; the date of purchase, lease, or acquisition; and the purchase price, lease amount, or value of all industrial personal property and commercial personal property owned by, leased by, or in the possession of that person or a related entity” for a specified period after filing the affidavit and must make these documents available if requested by the assessor of the local tax collecting unit. MCL 2.11.22(2).

the foregoing, we affirm the tribunal's denial of petitioners' request for an exemption pursuant to MCL 2.119o.

Affirmed.

/s/ Patrick M. Meter
/s/ Jane M. Beckering
/s/ Colleen A. O'Brien