STATE OF MICHIGAN

COURT OF APPEALS

TRANSFER TOOL SYSTEMS, INC., doing business as TRANSFER TOOL PRODUCTS, INC.,	UNPUBLISHED February 18, 2021
Petitioner-Appellant,	
v	No. 352505 Michigan Tax Tribunal
TOWNSHIP OF GRAND HAVEN,	LC No. 20-000061-TT
Respondent-Appellee.	

Before: BOONSTRA, P.J., and BORRELLO and RICK, JJ.

PER CURIAM.

Petitioner, Transfer Tool Systems, Inc., appeals as of right the Michigan Tax Tribunal's order granting summary disposition under MCR 2.116(I)(2) in favor of respondent, Township of Grand Haven. Transfer Tool asserts that its claim of the Eligible Manufacturing Personal Property (EMPP) tax exemption was improperly denied because it received inadequate notice of the denial; that this error should have been corrected by the December board of review; that the tax tribunal violated Transfer Tool's due-process rights by issuing its order of dismissal; and that Transfer Tool's timely filed appeal properly invoked the tax tribunal's decision. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Petitioner is a limited-liability company doing business in Grand Haven Township. For the tax years 2016, 2017, and 2018, petitioner claimed the EMPP tax exemption allowed under MCL 211.9m and MCL 211.9n.[1] For 2019, the tax year at issue, petitioner stated that it received the package of forms provided by the Grand Haven Township assessor for the annual personal-

[1] These two interrelated statutes establish the EMPP tax exemption. MCL 211.9m applies to new property, acquired after December 31, 2015. MCL 211.9n applies to previously existing property. Other than this distinction, the statutes are nearly identical.

property tax filing. The included forms were Form L-4175, 2019 Personal Property Statement; and Form 5076, Small Business Property Tax Exemption Claim Under MCL 211.9o.[2] Petitioner stated that it timely filed these forms.

Form L-4175, includes the following statement in bold type on the front page of the form:

> NOTICE: DO NOT USE THIS FORM TO CLAIM AN EXEMPTION AS ELIGIBLE MANUFACTURING PERSONAL PROPERTY (EMPP) PURSUANT TO MCL 211.9m AND MCL 211.9n. To claim an exemption for EMPP, file Form 5278 with the local assessor where the personal property is located no later than February 20, 2019. Lessors of equipment are not eligible to file Form 5278 and must complete this form. Pursuant to MCL 211.9o, if the true cash value of the assessable personal property you or a related party own, lease or possess in this local assessing unit is less than $80,000, then you do not need to file this form if the property is classified as commercial or industrial personal property and you timely claim the exemption. Instead, file Form 5076 with the local unit where the property is located no later than February 20, 2019. See the instructions on Page 5.

Form 5076 requires certifications from the signer, including: "The undersigned certifies that . . . The True Cash Value of all the Personal Property, as defined by MCL 211.9o located within the local tax collecting unit indicated above, that is owned by, leased to, or in the possession of the owner or related entity was less than $80,000 on December 31, 2018."

Petitioner represents that it did not learn that its 2019 EMPP exemption had been rejected until it received a tax bill in July 2019. Thereafter, petitioner, on July 18, 2019, filed a petition with the tax tribunal on July 18, 2019, seeking the EMPP exemption. The tax tribunal dismissed the petition sua sponte on July 31, 2019, stating:

> The Tribunal has no authority over Petitioner's uncapping appeal for the 2012 tax year, under MCL 211.9m or MCL 205.735a, as Petitioner did not comply with the statutory requirements for claiming the exemption set forth in MCL 211.9m(2)(c).[3] Petitioner was required to file the affidavit with Respondent's assessor by February 20, 2019 or, failing a timely filing, to appear directly before Respondent's 2019 March Board of Review. Having failed to

[2] MCL 211.9o is a separate exemption provision applicable to taxpayers who have less than $80,000 in total industrial or commercial personal property. Because the total amount of petitioner's property is substantially greater than that, petitioner could not have qualified for this exemption.

[3] We presume the reference to "uncapping appeal" is an error on the part of the tax tribunal. This case does not involve an "uncapping," but rather the denial of an exemption because the taxpayer failed to file the correct forms.

complete either of those steps, the Tribunal lacks jurisdiction over Petitioner's claim.

Further, the Tribunal has no "equitable powers" to waive or otherwise extend the statutory deadline for the filing of this appeal.

After this dismissal by the tax tribunal, petitioner requested that its 2019 property tax appeal be placed on the agenda for Grand Haven Township's December board of review, which held a hearing on the matter then determined it did not have jurisdiction over the claim stating:

> Attorney Ronald Vander Veen, representing Transfer Tool, appeared to appeal the EMPP status for Transfer Tool's personal property account. A discussion took place between the Board of Review, the attorney, and the representatives from Transfer Tool. The Board of Review has no jurisdiction to alter EMPP status, therefore no action was taken.

Petitioner then filed a second petition with the tax tribunal on January 18, 2020, and again the tribunal held it lacked jurisdiction holding, in relevant part:

> Petitioner alleges that it is timely appealing the denial from Respondent's 2019 December Board of Review ("BOR"). However, the Board's denial correctly indicates that it has no authority over Petitioner's appeal, under MCL 211.53b or MCL 211.9m. As the BOR had no authority to consider Petitioner's request for relief, the Tribunal likewise has no authority to consider the timely filed appeal from the BOR. Petitioner's pleadings contend that Respondent, not Petitioner, erred in it [sic] failure to provide Form 5278 to Petitioner prior to February 20, 2019, but, unlike Form L-4175, there is no legal requirement that Respondent deliver that form to Petitioner in lieu of or in addition to the personal property statement.
>
> Petitioner also alleges that Respondent erred in not providing a denial notice when Respondent's assessor denied Petitioner's exemption claim prior to the 2019 March BOR. While MCL 211.19(2)(a) and MCL 211.9m(2) contemplate a denial notice requirement that Petitioner alleges Respondent failed to meet, the proper remedy for a potential due-process violation is that Petitioner would be permitted to appeal within 35 days of its constructive notice of the denial, which was upon its receipt of the 2019 summer tax bill. Petitioner did, in fact, appeal the constructive denial to the Tribunal on July 16, 2019, by filing its Petition in MOAHR Docket No. 19-003203. On July 31, 2019, the Tribunal issued an Order dismissing that appeal, as the facts alleged in the July 16, 2019 Petition and attached evidence failed to establish a prima facie case that Petitioner had timely invoked the Tribunal's jurisdiction to consider the eligible manufacturing personal property claim raised in that appeal. Specifically, Petitioner relied upon its Form 5278 which was not completed under July 2019, and the pleadings in that Petition indicated that the date of filing was in July 2019. As a result, the Tribunal determined that it lacked jurisdiction because Petitioner failed to timely file Form 5278 with Respondent by the February 20, 2019 deadline and dismissed the case. The Order of Dismissal

> indicated that Petitioner had 21 days to either file a Motion for Reconsideration or to appeal the dismissal to the Michigan Court of Appeals, but Petitioner took no action upon that notice, instead waiting almost a half-year prior to incorrectly appealing the constructive denial to the BOR…

Following this decision of the Michigan tax tribunal, petitioner appeals to this Court.

II. ANALYSIS

On appeal, petitioner first argues that the assessor was required under the provisions of MCL 211.19, MCL 211.9m, and MCL 211.9n to provide notice that it denied petitioner's EMPP tax exemption, and that because no such notice was given, respondent failed to comply with the statutory requirements. The essence of petitioner's claim is that respondent had a duty to notify petitioner that they filed the wrong claim form to secure an EMPP tax exemption.

Questions of statutory interpretation are questions of law, which this Court reviews de novo. *General Motors Corp v Dep't of Treasury*, 290 Mich App 355, 369; 803 NW2d 698 (2010).

A claim of an EMPP tax exemption must be made in a combined document. MCL 211.9m(2). "The combined document shall be in a form and manner prescribed by the department of treasury." MCL 211.9m(2)(a). Further, MCL 211.9m(2)(c) provides as follows:

> The combined document prescribed in this section, shall be completed and delivered to the assessor of the township or city in which the qualified new personal property is located by February 20 of each year . . . . If the combined document prescribed in this section is not timely delivered to the assessor of the township or city, a late application may be filed directly with the March board of review before its final adjournment by submitting the combined document prescribed in this section. The board of review shall not accept a filing after adjournment of its March meeting. An appeal of a denial by the March board of review may be made by filing a petition with the Michigan tax tribunal within 35 days of the denial notice.

Additionally, MCL 211.19(2) provides as follows:

> Except as otherwise provided in section 9m, 9n, or 9o, the supervisor or other assessing officer shall require any person whom he or she believes has personal property in their possession to make a statement of all the personal property of that person whether owned by that person or held for the use of another to be completed and delivered to the supervisor or assessor by February 20 of each year, or, if February 20 of a year is a Saturday, Sunday, or legal holiday, the next day that is not a Saturday, Sunday, or legal holiday of that year. For purposes of a statement delivered by the United States Postal Service, the delivery is timely if the postmark date is on or before the delivery deadline prescribed in this subsection. If the statement is not timely delivered to the supervisor or other assessing officer, a late submission may be filed directly with the March board of review before its final adjournment by submitting the statement prescribed in this subsection. *The board of review shall not accept a filing after adjournment of its March meeting.*

> An appeal of a denial by the March board of review may be made by filing a petition with the Michigan tax tribunal within 35 days of the denial notice. A notice the supervisor or other assessing officer provides regarding the statement required under this subsection shall also do all of the following:
>
> (a) *Notify the person to whom such notice is given of the exemptions available under sections 9m, 9n,* and 9o.
>
> (b) *Explain where information about those exemptions, the forms and requirements for claiming those exemptions, and the forms for the statement otherwise required under this section are available.*
>
> (c) Be sent or delivered by not later than January 10 of each year. [Emphasis added.]

These statutes do not contain a requirement that the assessor respond to the taxpayer with a denial notice by any particular deadline. However, MCL 211.9m(3) provides:

> *If* the assessor of the township or city believes that personal property *for which the form claiming an exemption is timely filed* each year under subsection (2)(c) is not qualified new personal property or the form filed was incomplete, the assessor may deny that claim for exemption *by notifying the person that filed the form in writing of the reason for the denial* and advising the person that the denial shall be appealed to the board of review under section 30 by filing a combined document as prescribed under subsection (2). If the denial is issued after the first meeting of the March board of review that follows the organizational meeting, the appeal of the denial is either to the March board of review or the Michigan tax tribunal by filing a petition and a completed combined document as prescribed under subsection (2), within 35 days of the denial notice. The assessor may deny a claim for exemption under this subsection for the current year only. If the assessor denies a claim for exemption, the assessor shall remove the exemption of that personal property and amend the tax roll to reflect the denial and the local treasurer shall within 30 days of the date of the denial issue a corrected tax bill for any additional taxes. [Emphasis added].

MCL 211.9m(3) (and its companion statute, MCL 211.9n(3)) require that the assessor notify the taxpayer if it denies the taxpayer's EMPP tax exemption claim. However, these provisions are only triggered when the taxpayer timely files the form claiming the exemption. In this case, because the proper form was not timely filed, these provisions—including the contained notice requirements—were not triggered, and do not apply.

The record indicates that the assessing official complied with requirements (2)(a) and (b), by sending forms that included the required notice. See MCL 211.19(2)(a) and (b). As previously noted, form L-4175 clearly states, in bold type: "NOTICE: DO NOT USE THIS FORM TO CLAIM AN EXEMPTION AS ELIGIBLE MANUFACTURING PERSONAL PROPERTY (EMPP) PURSUANT TO MCL 211.9m AND MCL 211.9n. To claim an exemption for EMPP, file Form 5278 with the local assessor where the personal property is located no later than February

20, 2019." This statement, included in the form sent by the assessor, satisfies the notice requirement of MCL 211.19(a). The form further states, "See the instructions on Page 5." The instructions on page 5 reiterate that Form L-4175 is not the correct form for claiming the EMPP, and that Form 5278 is required. The instructions contain the statement "Form 5278 can be accessed at www.michigan.gov/esa." This statement satisfies the requirement to explain where information can be found that is contained in MCL 211.19(2)(b). The record does not indicate when the forms were received by petitioner, and petitioner does not suggest that the forms were received after January 10, 2019. Therefore, the requirement under MCL 211.19(2)(c) is not at issue. Because the three requirements are met, respondent's assessing official satisfied the statutory notice requirement.

Petitioner cites this same notice requirement, but asserts that respondent failed to satisfy the requirement because it did not notify petitioner of its denial after the forms were filed. However, this statement essentially adds a requirement that does not exist in any of the applicable statutes. Petitioner's Chief Financial Officer signed the forms submitted, which included the notification as well as a certification that the total manufacturing property was less than $80,000, when in fact the taxable value of personal property at issue was over $3,000,000. At a minimum, the taxpayer's signature on the form could be construed as acknowledgment that the taxpayer understood the content of the form. Because the notice requirement is prominently featured on the form, petitioner's argument that it did not receive proper notice is without merit. MCL 211.19 is also very clear that the applicable forms cannot be accepted after the March board of review has taken place. Accordingly, petitioner is not entitled to relief on this issue.

Petitioner next argues that its filing of incorrect forms was a qualified error within the meaning of MCL 211.53b, which should have been corrected by the December board of review.

MCL 211.53b provides procedures to allow the correction of certain specified errors. The statute provides in relevant part:

> (1) If there has been a qualified error, the qualified error must be verified by the local assessing officer and approved by the board of review. . . .
>
> (2) Action pursuant to subsection (1) may be initiated by the taxpayer or the assessing officer.
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> * * *
>
> (8) As used in this section, "qualified error" means 1 or more of the following:
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> * * *
>
> (g) An error made by the taxpayer in preparing the statement of assessable personal property under section 19.
>
> (h) An error made in the denial of a claim of exemption for personal property under section 9o.

In 2016, MCL 211.53b(8)(h) was amended by 2016 Public Act 108. Before the amendment, MCL 211.53b(8)(h) read: "An error made in the denial of a claim of exemption for personal property under section 9m, 9n, or 9o." MCL 211.53b(h), effective 11/5/2013. The Legislature specifically removed §§ 9m and 9n—the sections that grant the EMPP tax exemption—from the relief provided for qualified errors by MCL 211.53b.

"Where a statute sets forth its own definitions, the terms must be applied as expressly defined." *Cherry Growers, Inc v Agricultural Mktg and Bargaining Bd*, 240 Mich App 153, 169; 610 NW2d 613 (2000). "When interpreting a statute, we must ascertain the legislative intent that may reasonably be inferred from the statutory language itself." *Griffith ex rel Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 526; 697 NW2d 895 (2005).

Here, petitioner argues that its error in filing falls under MCL 211.53b(8)(g). In making this argument, petitioner states, "The exemption forms 5076 and 5278 are required to be combined with form 4175." However, the correct procedure is that these forms are filed as stand-alone forms, and effectively replace Form L-4175 when they are applicable. The instruction statement for Form L-4175—the property statement referred to in § 19, which is filed when a taxpayer does not claim any of the exemptions—provides:

> Pursuant to MCL 211.9o, if the true cash value of the assessable personal property you or a related party own, lease or possess in this local assessing unit is less than $80,000, then *you do not need to file this form* if the property is classified as commercial or industrial personal property and you timely claim the exemption. Instead, file Form 5076 with the local unit where the property is located no later than February 20, 2019. [Emphasis added].

Similarly, as previously noted, Form L-4175 includes specific instructions that it is not to be used to claim the EMPP tax exemption: "DO NOT USE THIS FORM TO CLAIM [the EMPP tax exemption] . . . . To claim an exemption for EMPP, file Form 5278 with the local assessor where the personal property is located . . . ." Petitioner asserts that because the errors in the attached forms were part of the statement required under MCL 211.19, this error falls within Subsection (8)(g) and, therefore, is qualified error correctible by the December board of review.

Petitioner's argument that its filing error falls within Subsection (8)(g) fails for several reasons. First, even though it provides much of the same information as the form described in § 19, the stand-alone form used to claim the exemption, Form 5278, is actually described in MCL 211.9m(2) and MCL 211.9n(2). Second, the issue in this case is that the incorrect form was filed; there is no claim that the content of the form, specifically the statement of included property—required correction. Third, the Legislature specifically provided Subsection (8)(h) to include the tax exemption statutes in the definition of qualified error, and subsection (8)(h) does not apply to errors involving the EMPP tax exemption, because the Legislature specifically excluded §§ 9m and 9n from this part of the definition in 2016. The fact that the EMPP tax exemption provisions were included in Subsection (8)(h), and were later removed, suggests the Legislature intended that the 2016 change remove these provisions from the definition of qualified error completely. This interpretation is supported by MCL 211.19(2), which provides the notice requirements applicable to the EMPP provisions. Because petitioner's failure to file the correct forms is not qualified error as defined in MCL 211.53b(8), respondent's December board of review

did not err in concluding it had no jurisdiction over petitioner's EMPP tax exemption claim. Accordingly, petitioner is not entitled to relief on this issue.

Petitioner next claims that the actions taken by respondent, together with the tax tribunal's dismissal of its petition, violated petitioner's constitutional due-process rights.

The Fourteenth Amendment of the United States Constitution provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [US Const, Am XIV.]

The Michigan Constitution provides: "No person shall . . . be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed." Const 1963, art 1, § 17.

Due process is a matter of fundamental fairness. *By Lo Oil Co v Dep't of Treasury*, 267 Mich App 19, 29; 703 NW2d 822 (2005). "Due process is a flexible concept, however, and determining what process is due in a particular case depends on the nature of the proceeding, the risks and costs involved, and the private and governmental interests that might be affected." *Id*.

The United States Supreme Court has stated that in tax matters, states must provide sufficient procedural safeguards to satisfy due-process requirements because taxes can result in deprivation of property. *McKesson Corp v Div of Alcoholic Beverages*, 496 US 18, 36; 110 S Ct 2238; 110 L Ed 2d 17 (1990). States "are afforded great flexibility in satisfying the requirements of due process in the field of taxation." *Nat'l Private Truck Council, Inc v Oklahoma Tax Comm*, 515 US 582, 587; 115 S Ct 2351; 132 L Ed 2d 509 (1995). For due process to be satisfied, a taxpayer must have "a fair opportunity to challenge the accuracy and legal validity of their tax obligation, but also a 'clear and certain remedy' for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one." *McKesson*, 496 US at 39, quoting *Atchison T & S F R Co v O'Connor*, 223 US 280, 285; 32 S Ct 216; 56 L Ed 436 (1912).

As discussed earlier, the package of forms sent to petitioner contained a conspicuous notice that was designed to inform taxpayers of the required procedure for claiming the EMPP tax exemption. This notice is required by statute. MCL 211.19(2). This same statute further provides for a review process and an appeal process. MCL 211.19(2). In this case, the December board of review and the tax tribunal followed the procedures set forth in the statute. Any deprivation of petitioner's rights was due to its inattentiveness to these requirements. Because the state enacted adequate safeguards—notice and an appeal process—in its statutes, and these requirements were followed by the agencies tasked with carrying them out, no due-process violation is implicated. See *By Lo Oil Co*, 267 Mich App at 30. Accordingly, petitioner is not entitled to relief on this issue.

Petitioner also challenges the Michigan tax tribunal's affirmance of respondent's December board of review findings. However, because the December board of review did not

have authority to hear petitioner's claim, the Michigan tax tribunal did not have subject-matter jurisdiction over the claim.

MCL 205.735a states:

> The *jurisdiction of the tribunal* in an assessment dispute *as to property classified* under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, *as* commercial real property, industrial real property, developmental real property, *commercial personal property, industrial personal property*, or utility personal property *is invoked by* a party in interest, as petitioner, filing a written petition *on or before May 31* of the tax year involved. [MCL 205.735a(6) (emphasis added).]

"The Tax Tribunal's powers are limited to those authorized by statute . . . ." *Electronic Data Sys Corp*, 253 Mich App at 547. As the Michigan tax tribunal aptly noted, the tax tribunal does not have equity power, and cannot grant a request to waive the statutory deadline for the filing of an appeal. *Id*. at 548.

In this case, petitioner attempted to invoke the tax tribunal's jurisdiction twice, both times after the statutory deadline of May 31. In the first instance, petitioner filed a petition with the Michigan tax tribunal in July 2019 without ever appearing before the board of review. In the second instance, petitioner filed a petition with the tax tribunal on January 14, 2020, which was within 35 days after the December board of review's decision on December 10, 2019. As previously discussed, the December board of review did not have jurisdiction over petitioner's appeal because there was no qualified error. Therefore, the statutory jurisdiction of the Michigan tax tribunal was not properly invoked, and the tax tribunal did not err by dismissing the petition.

Affirmed. No costs are awarded to either party, a public question being involved. MCR 7.216(A)(7); MCR 7.219(A). *City of Bay City v Bay County Treasurer*, 292 Mich App 156, 172; 807 NW2d 892 (2011).

/s/ Mark T. Boonstra
/s/ Stephen L. Borrello
/s/ Michelle M. Rick