

STATE OF MICHIGAN
COURT OF APPEALS

DELTA AIR LINES, INC,

Petitioner-Appellant,

v

CITY OF ROMULUS,

Respondent-Appellee.

UNPUBLISHED
February 15, 2005

No. 247575
Michigan Tax Tribunal
LC No. 00-263925

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Petitioner appeals by right the tax tribunal order granting its motion for entry of judgment, but denying its request for interest. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1982, petitioner entered into a 20-year lease of an airplane hanger with Wayne County. The lease required petitioner to pay all applicable taxes during the lease period. Beginning November 15, 1994, Delta discontinued use of the hanger, and the hanger was leased to Spirit Airlines. In 1995 and 1996, respondent assessed property taxes on the hangar against petitioner, and petitioner paid the taxes.

After petitioner discovered that it paid the taxes in error, it brought an action under MCL 211.53a, seeking a refund of taxes paid in error. The tax tribunal determined that it lacked jurisdiction because the payments did not result from a mutual mistake of fact and dismissed the action. This Court reversed. *Delta Airlines, Inc v City of Romulus*, unpublished opinion per curiam of the Court of Appeals, issued August 2, 2002 (Docket No. 225881).

On remand, petitioner moved for entry of judgment for the 1995 and 1996 taxes paid, plus interest. The tribunal granted the motion, but declined to award interest, citing MCL 211.53a. On appeal, petitioner asserts that the tribunal erred in failing to follow MCL 205.737(4).

Petitioner brought this action under the General Property Tax Act, MCL 211.53a, which provides:

Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of clerical error or mutual mistake of fact made by the

assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

To negate this provision, petitioner relies on the Tax Tribunal Act. MCL 205.707 states: “The provisions of this act are effective notwithstanding the provisions of any statute, charter, or law to the contrary.” MCL 205.737(4) provides in part: “A sum determined by the tribunal to have been unlawfully paid or underpaid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment.”

The two statutes relate to the same subject and, thus, are in pari materia and should be read together. *Jackson Comm College v Dept of Treasury*, 241 Mich App 673, 681; 621 NW2d 707 (2000). If the statutes lend themselves to a construction that avoids conflict, that construction should control. *Id.* The difference in language between the two provisions allows for a construction that avoids conflict and indicates that interest should not be awarded. The Tax Tribunal Act requires interest where a tax has been unlawfully paid. A tax that is voluntarily paid without protest is not unlawful. See, e.g., *National Bank of Detroit v Detroit*, 272 Mich 610, 614-615; 262 NW 422 (1935). The more specific provision of MCL 211.53a concerning taxes paid under mutual mistake should govern this dispute, and the tribunal properly declined to award interest.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen