STATE OF MICHIGAN

COURT OF APPEALS

ASAHI KASEI PLASTICS NORTH AMERICA, INC.,	UNPUBLISHED January 29, 2013
Plaintiff-Appellee,	
v	No. 309240 Court of Claims
DEPARTMENT OF TREASURY,	LC No. 11-000034-MT
Defendant-Appellant.	

Before: SAWYER, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals by right the trial court's order granting plaintiff's motion for summary disposition and denying defendant's cross-motion for summary disposition. We affirm.

I. FACTS

Plaintiff filed its Single Business Tax (SBT) returns and paid its applicable SBT liabilities for 2003, 2004, and 2005. After conducting an SBT audit for those years, defendant determined that plaintiff claimed an investment tax credit (ITC) for the year 2003 when plaintiff had actually generated that ITC in the year 2002. The year 2002 had closed for tax refunds under MCL 205.27a(2), a provision of the revenue act, MCL 205.1 *et seq*., which imposed a four-year limitations period on "refunds." Defendant maintained that the excess ITC was a refund and therefore assessed additional SBT and interest against plaintiff. Plaintiff claimed that the excess ITC it generated in 2002 did not entitle it to a tax refund and that it was therefore not subject to the four-year limitations period of § 205.27(a)(2). Plaintiff claimed that the excess ITC could not be refunded, but that it was only available to be carried forward as an offset on future tax liability under MCL 208.35a(4), a provision of the repealed SBT, MCL 208.1 *et seq*.[1] Plaintiff argued that its excess ITC offset its SBT liabilities for the open tax years of 2003, 2004, and 2005.

[1] The single business tax repeal was effective on December 31, 2007. See MCL 208.151.

The lower court found that the four-year limitations period of the revenue act applies only to tax refunds and that excess ITC that was being carried forward under the SBT was not a refund. As such, the lower court found that plaintiff could carry forward its unclaimed ITC from 2002 to offset its tax liability for the open years of 2003, 2004, and 2005.

II. ANALYSIS

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Anzaldua v Neogen Corp*, 292 Mich App 626, 629; 808 NW2d 804 (2011). A motion for summary disposition brought under MCR 2.116(C)(8)[2] tests whether the complaint states a claim as a matter of law. *Id.* In reviewing the motion, the lower court must accept as true all well-pleaded allegations and construe them in a light most favorable to the nonmoving party. *Id.* "The motion should be granted if no factual development could possibly justify discovery." *Id.*

The SBT provides for an ITC for the costs of certain tangible assets held in the state. MCL 208.35. When a company's ITC is in excess of its SBT liabilities, the SBT specifically allows the company to carry forward its excess ITC to offset subsequent SBT tax liabilities for up to nine years. MCL 208.35a(4). Although the SBT Act allows companies to carry forward excess ITC, it does not allow any refunds of excess ITC. MCL 208.35a(4) provided:

> If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 9 taxable years or until the excess credit is used up, whichever occurs first.

Moreover, the revenue act specifically states that a "taxpayer shall not claim a refund of any amount paid to the department after the expiration of four years after the date set for the filing of the original return." MCL 205.27a.

A court's primary purpose in interpreting a statute is to effectuate legislative intent. *Michigan Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 217; 801 NW2d 35 (2011). If statutory language is clear and unambiguous, courts presume the intended meaning is as expressed and further construction is neither required nor permitted. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). In seeking to ascertain the intent of the Legislature, "the rules of statutory construction merely serve as guides to assist in determining that intent with a greater degree of certainty." *Niles Twp v Berrien Co Bd of Comm'rs*, 261 Mich App 308, 312; 683 NW2d 148 (2004). Generally, where a statute that levies a tax is ambiguous, this Court will construe that statute against the taxing unit, in favor of the taxpayer. *Stege v Dep't of Treasury*, 252 Mich App 183, 188; 651 NW2d 164 (2002).

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[2] Plaintiff actually moved for summary disposition under MCR 2.116(C)(10). Following suit, the lower court granted plaintiff's motion under that same court rule. However, because the lower court granted plaintiff's motion as a matter of law, based on the pleadings alone, it should have granted the motion under MCR 2.116(C)(8).

Determining legislative intent must begin by examining the language of the statute itself. *United States Fid Ins & Guar Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1, 13; 795 NW2d 101 (2009). The plain meaning of a statute's words provide the most reliable evidence of the Legislature's intent, and it is the statute to which we must always first turn. *Id.* Courts must accord an undefined statutory term its ordinary meaning and may not substitute alternative language for that of the Legislature. *Lash v Traverse City*, 479 Mich 180, 189; 735 NW2d 628 (2007).

While the revenue act does not provide a statutory definition of the term "refund," the SBT characterizes excess ITC as a "carryforward," and specifically states that excess ITC "shall not be refunded." MCL 208.35a(4). Even if the revenue act specifically stated that a nonrefundable ITC carryforward is a "refund," the plain language of the SBT would apply. Section 80(1) of the SBT requires this Court to resolve any conflict between the revenue act and the SBT in favor of the SBT. MCL 208.80(1). Based on the plain and unambiguous language of MCL 208.35a(4), plaintiff's excess ITC credits are not a refund subject to the four-year limitations period under the revenue act.

Defendant points to Section 30(2) of the revenue act for the proposition that excess ITC should be considered a refund. That section states:

> 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 [under Section 27a]. *If a tax return reflects an overpayment or credits in excess of the tax, the declaration of that fact on the return constitutes a claim for refund.* If the department agrees the claim is valid, the amount of overpayment, penalties, and interest shall be first applied to any known liability as provided in section 30a, and the excess, if any, shall be refunded to the taxpayer or credited, at the taxpayer's request, against any current or subsequent tax liability. [MCL 205.30(2) (emphasis added).]

Contrary to defendant's assertion, § 30(2) does not constitute an all-encompassing statutory definition of "refund" applicable to the SBT Act. In fact, § 30(2) is not a definition at all. First, § 30(2) establishes that a taxpayer may file a petition for refund if he or she has paid too much in taxes. Next, § 30(2) simply allows that taxpayer to claim a refund based on overpayment of taxes, or excess credits, using his or her tax return, without filing the aforementioned petition. Reading § 30(2) as a controlling definition of "refund" would place the SBT and the revenue act in conflict, in violation of well-accepted rules of statutory construction. Statutes that relate to the same subject or that share a common purpose are *in para materia* and must be read together as one. *People v Buehler*, 477 Mich 18, 26; 727 NW2d 127 (2007).

Plaintiff's excess ITC is not a "refund" subject to the four-year limitations period of MCL 205.27a. Therefore, plaintiff can carry forward its excess ITC from the year 2002 to offset its SBT liabilities for the open tax years of 2003, 2004, and 2005.

We affirm. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Michael J. Kelly