STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Kinder Morgan Michigan, LLC,
Petitioner,

v MTT Docket No. 319505

City of Jackson,
Respondent.

Tribunal Judge Presiding
Jack Van Coevering

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

I. INTRODUCTION

Petitioner, Kinder Morgan Michigan, LLC, is appealing Respondent's, City of Jackson, levy of taxes on Petitioner's property, which is located in a Renaissance Zone established pursuant to MCL 125.2681. On February 17, 2006, Petitioner filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(10), which entitles the moving party to 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. On March 2, 2006, Respondent filed its answer to Petitioner's Motion, as well as a Cross-Motion for Summary Disposition pursuant to MCR 2.116(C)(10).

II. FINDINGS OF FACT

The property under appeal is a parcel of land owned by Petitioner Kinder Morgan Michigan, LLC. The subject property is located in the City of Jackson, County of Jackson, State of Michigan, identified as parcel number 6-095400000. The subject property is an electric power generation plant that is located within a renaissance zone established pursuant to MCL 125.2681, et seq. Respondent, City of Jackson, maintains a Fire and Police Pension System that was established pursuant to the Fire Fighters and Police Officers Retirement Act, Public Act 345 of

1937, MCL 38.551, et seq. On March 15, 2004, the Michigan Department of Treasury issued a memorandum providing Respondent with a list of the types of taxes that should be levied on Renaissance Zone properties. The memorandum noted that "[a]ny obligations pledging the unlimited taxing power of the local unit such as…PA 345 Pension, MCL 211.7ff(2)(b)" should be taxed. In accord with the memorandum, and pursuant to the Fire and Police Pension System, Respondent assessed the subject property at a rate of 4.12 mills, for a total tax liability of $461,440 for the 2005 tax year. Petitioner protested the assessment at Respondent's Board of Review, maintaining that because the subject property was located in a renaissance zone, it was exempt from tax liability pursuant to MCL 125.2681, et seq. The Board, however, denied Petitioner's request for relief. Following the Board's denial to grant the relief requested, Petitioner filed its appeal with the Tribunal on July 29, 2005, protesting the assessment and asserting a renaissance zone tax exemption.

III. PETITIONER'S CONTENTIONS

In support of its Motion for Summary Disposition, Petitioner contends that (i) "[t]he subject property is exempt from the Act 345 Pension Millage," (ii) "Respondent['s]…Act 345 pension millage of 4.12 mills has been improperly applied to the subject property because MCL 211.7ff of the General Property Tax Act provides no exception from a renaissance zone tax exemption for an Act 345 pension millage," (iii) "[t]he City admits that the Act 345 pension millage is not a special assessment or a tax levied under Section 705, 1211c or 1212 of the Revised School Code….Therefore, the exception at issue in this case is the one found in subsection (2)(b)," (iv) the exception set forth in subsection (2)(b) excludes from MCL 211.7ff's general tax exemption "taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the

local government unit…," (v) "[t]he Michigan Legislature…makes it plain that the Michigan Renaissance Zone Act should be liberally construed and broadly interpreted to effectuate the Legislature's intent….Liberal construction and broad interpretation of the…Act requires a liberal construction and broad interpretation of the tax exemption in the Act, and a narrow interpretation and narrow construction of exceptions to the tax exemptions….Therefore, unless an exception to the [Act] is specifically and clearly expressed in the Act, property located within a renaissance zone must be given the benefit of the renaissance zone tax exemption in order to ensure that the Legislature's intentions are carried out," (vi) the subsection (2)(b) exception to the Renaissance Zone Tax Exemption does not include an Act 345 pension millage because the language of the exception "does not specifically exclude an Act 345 pension millage" and the exception "is limited to taxes levied for payment of principal and interest on obligations and in that regard contemplated bonds, notes and other debt instruments," (vii) "the express legislative intent set forth in the Renaissance Zone Act and the pertinent legislative history support a renaissance zone tax exemption from an Act 345 pension millage for the subject property," (viii) the memo issued by the Department of Treasury must be disregarded because it is contrary to the plain meaning and intent of section 7ff and "[w]hile weight can be given to administrative interpretation in appropriate situations, such interpretations are not binding on this Tribunal and cannot in any case defeat a statute's plain meaning," (ix) "[m]oreover, even if the Tribunal were to decide that an Act 345 pension millage is excluded from the renaissance zone tax exemption, Respondent…did not lawfully assess the Act 345 pension millage for tax year 2005 because it failed to follow the procedures mandated by the General Property Tax Act."

IV. RESPONDENT'S CONTENTIONS

In its answer to Petitioner's Motion for Summary Disposition and Cross-Motion for Summary Disposition, Respondent contends (i) "[t]his case involves interpretation of MCL 211.7ff(2)(b)," which provides an exception to the renaissance zone general exemption from taxes, (ii) MCL 211.7ff(2)(b) exempts "[a]d valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit," (iii) statutory construction of subsection 2(b) requires the interpretation that it "contains two distinct exemptions. The first part…exempts taxes levied for the payment of principal and interest on debt obligations approved by the electors….[and] the second exemption…addresses 'obligations pledging the unlimited taxing power' which…is exactly what an Act 345 pension does under Michigan law," (iv) in drafting the statute, the legislature omitted "the term 'principal and interest' in the second clause" and thus the second exclusion of subsection (2)(b) is not limited to debt obligations," (v) section 9 of Act 345 states that "[t]he amount required by taxation to meet the appropriations to be made by municipalities under this Act shall be in addition to any tax limitations imposed upon tax rates in those municipalities by charter provisions or by state law." Thus it "mandates that pension benefits be funded from the 'unlimited taxing power' of a local governmental unit that adopts an Act 345 pension system," (vi) "[s]ubsection 9(5) of Act 345 specifically provides that: 'All pensions allowed and payable to retired members and beneficiaries under this Act shall become obligations of and payable from the funds of the Retirement System," (vii) "[s]ince, as provided in MCL 38.559(2), Act 345 pensions are obligations pledging the unlimited taxing power of the City, there can be no interpretation other than Act 345 millages are included in the subsection (2)(b) exemptions," (viii) "[t]he March 15, 2004 memo issued by the Department of Treasury…assists the Tribunal in interpreting the meaning of subsection 2(b). The memo

specifically provides that Act 345 millages are not exempt in a renaissance zone….[T]he law in this state is that the Tribunal should give great deference to the Department of Treasury's interpretation…," (ix) "the City properly levied the Act 345 pension millage against Petitioner's property for tax year 2005."

V. APPLICABLE LAW

The parties agree that the subject property is located in a renaissance zone established pursuant to MCL 125.2681, et seq. Further, the parties agree that because the subject property is located in a Renaissance Zone, it is generally exempt from property taxes, and that taxes may not be levied upon the property unless the levy is authorized under one of the exceptions found in MCL 211.7ff. Moreover, the parties agree that the only exception at issue in this case is the one found in MCL 211.7ff(2)(b). Therefore, the only remaining issues are (i) whether the Department of Treasury's interpretation of MCL 211.7ff is binding on the Tribunal, and if not, (ii) whether Respondent's tax levy upon the subject property is authorized under the subsection (2)(b) exception.

Respondent contends that the Tribunal should give great deference to the Department of Treasury's interpretation. In support of its contention, Respondent cites *Davis v River Rouge Bd of Ed*, 406 Mich 486 (1979), for the proposition that "the construction placed upon a statute by the agency legislatively chosen to administer it is entitled to great weight." *Id.* at 490. In *County of Wayne v Michigan State Tax Commission*, 682 NW2d 100 (2004), the Court of Appeals stated:

> [s]ubject to section 28 of article VI of the state constitution of 1963, and pursuant to section 102 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being section 24.302 of the Michigan Compiled laws, and in accordance with the Michigan Court rules, and appeal from the tribunal's decision shall be by right to the court of appeals. For purposes of the

> constitutional provision, the tribunal is the final agency for the administration of property tax laws. *Id.* at 187.

Additionally, the Court stated that "there is no law that supports the proposition that the tribunal is limited in its review concerning the legal validity of the tables as constructed by the STC." *Id.* at 188. Thus, while it is true that the Tribunal should, and does, give great deference to the Department of Treasury's interpretations, the Department's interpretations are guidelines, and they are not binding upon the Tribunal. It is the Tribunal's obligation to interpret relevant property tax statutes, despite what the administering agency interpretations may be.

Concluding that the Department of Treasury's interpretations of MCL 211.7ff are not binding upon the Tribunal, we now turn to the issue of whether Respondent's tax levy upon the subject property is authorized under the subsection (2)(b) exception.

MCL 211.7ff states, in pertinent part,

> (1) For taxes levied after 1996, except as otherwise provided in subsections (2) and (3) and except as limited in subsections (4), (5), and (6), real property in a renaissance zone and personal property located in a renaissance zone is exempt from taxes collected under this act to the extent and for the duration provided pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696.
> (2) Real and personal property in a renaissance zone is not exempt from collection of the following:
> (a) A special assessment levied by the local tax collecting unit in which the property is located.
> (b) Ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit.
> (c) A tax levied under section 705, 1211c, or 1212 of the revised school code, 1976 PA 451, MCL 380.705, 380.1211c, and 380.1212.

Thus, although property in renaissance zones is generally exempt from tax liabilities, subsection (2) provides three exceptions to this general exemption. The parties have stated, and the Tribunal agrees, that the exception at issue in this case is the one found in subsection (2)(b), which allows renaissance zone property to be assessed with property taxes that are levied for the

purpose of paying "obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit." The issue, then, is under what circumstances the legislature intended the subsection (2)(b) exception to apply.

"Undefined statutory terms must be given their plain and ordinary meanings, and it is proper to consult a dictionary for definitions." *Halloran v Bhan*, 470 Mich 572, 578 (2004)(citations omitted). "Principal" is defined as "The amount of a debt, investment, or other fund, not including interest, earnings, or profits." Black's Law Dictionary (8th ed. 2004). "Obligation" is defined as "a formal, binding agreement or acknowledgement of a liability to pay a certain amount." Black's Law Dictionary 1102 (7th ed. 1999). "Pledge" is defined as "the act of providing something as security for a debt or obligation." Black's Law Dictionary 1175 (7th ed. 1999). Taking all of these terms and their definitions into consideration as a whole, it is evident that the plain language of the statute establishes that subsection (2)(b) of the statute is concerned with debt obligations. Thus, it is clear that the legislature intended to limit the exception found in subsection (2)(b) of the statute to taxes levied for payment of debt obligations.

We reject Respondent's contention that the statutory construction of subsection (2)(b) requires the interpretation that it contains two distinct exemptions, the first of which is limited to debt obligations by the Legislature's insertion of the phrase "principal and interest," and the second of which is not limited to debt obligations by the Legislature's omission of that phrase. Applying the phrase "principal and interest" to qualify the phrase "obligations approved by the electors" and not to qualify the phrase "obligations pledging the unlimited taxing power of the local governmental unit" would require an unnatural and improper reading of the statute. There is no comma or other punctuation to disrupt the parallel structure of subsection (2)(b). Thus, the

grammatical structure of subsection (2)(b) clearly shows that the exception, in its entirety, applies only to taxes levied to pay principal and interest on debt obligations.

MCL 211.7ff originated in the Michigan Senate as Senate Bill 670, which states in pertinent part:

> Except as provided in the bill for exempt real property, *a tax levied to pay principal and interest due on an obligation* of a local taxing unit such as bonds, refunding bonds, notes, certificates of indebtedness, contracts or assessments for the payment of bonds, and other similar instruments issued or incurred by the local taxing unit *that met one or more of the following requirements: evidenced a general obligation of that local taxing unit, pledged the full faith and credit of that local taxing unit, and/or was payable primarily or secondarily from taxes and/or special assessments*. (emphasis added)

From this language, it is clear that the legislature intended several requirements for the exception to apply. The tax must be levied to pay principal and interest on an obligation, and the obligation must either (i) evidence a general obligation of the local taxing unit pledging the full faith and credit of the local taxing unit, or (ii) must have been payable from taxes and/or special assessments. Thus, the legislative history of MCL 211.7ff confirms the Tribunal's interpretation of MCL 211.7ff(2)(b)'s exception to the renaissance zone exemption.

Because we have concluded that the Tribunal must give deference to, but is not bound by, the Department of Treasury's interpretations, that the principles of statutory construction and legislative history require the conclusion that the exception to the Renaissance Zone tax exemption found within MCL 211.7ff(2)(b) applies only to those taxes levied specifically for the payment of principal and interest on debt obligations, we now must determine whether Respondent properly levied taxes on the subject property. More specifically, we must determine whether the taxes were levied for the payment of an "obligation" within the meaning of the subsection (2)(b) exception. We hold that they were not. The Tribunal has concluded above that the exception found in subsection (2)(b) is applicable only to debt obligations. Respondent

City's Fire and Police Pension System may be an obligation of the City, however, it is not a debt obligation within the meaning of subsection (2)(b). Therefore, the subject property is exempt from Respondent's Fire Fighters and Police Officers Retirement Act millage and Respondent's levy upon the subject property was improper.

VI. CONCLUSIONS OF LAW

A motion for summary disposition brought under MCR 2.116(C)(10) entitles the moving party to 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.

> Motions for summary disposition are governed by MCR 2.116. A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). *JW Hobbs Corp v Mich Dep't of Treasury*, Court of Claims Docket No. 02-166-MT (January 14, 2004). This particular motion has had a longstanding history in the Tribunal. *Kern v Pontiac Twp, supra*; *Beerbower v Dep't of Treasury*, MTT Docket No. 73736 (November 1, 1985); *Lichnovsky v Mich Dep't of Treasury, supra; Charfoos v Mich Dep't of Treasury*, MTT Docket No. 120510 (May 3, 1989); *Kivela v Mich Dep't of Treasury*, MTT Docket No. 131823.
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> The moving party has the initial burden of supporting its claim with affidavits, depositions, admissions and other documentary evidence. MCR 2.116(G)(3). The nonmoving party must by affidavits or other documentary evidence demonstrate specific facts showing that a genuine issue exists for trial. MCR 2.116(G)(4). The nonmoving may not rest on mere allegations or denials in his or her pleadings, and, if the nonmoving party "does not so respond, judgment, if appropriate, shall be entered against him or her." MCR 2.116(G)(4); see *Quito v Cross & Peters*, 451 Mich 358, 362-372; 547 NW2d 314 (1996); see also *Charfoos, supra* and *Kivela, supra*. The trier of fact evaluates the motion in a light most favorable to the nonmoving party by considering the substantively admissible evidence actually proffered in opposition to the motion. *Maiden, supra* at 121. The mere possibility that the claim might be supported by evidence produced at trial may not be considered. *Id*. *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745, March 4, 2004.

This Tribunal has considered Petitioner's Motion for Summary Disposition, Respondent's answer thereto and Respondent's Cross-Motion for Summary Disposition under the criteria for MCR 2.116(C)(8), and granting this motion is warranted based on the pleadings and other documentary evidence filed with the Tribunal. The Tribunal has concluded that Respondent's levy of taxes on the subject property was improper, in that the taxes were not levied for the payment of an "obligation" within the meaning of the (2)(b) exception, and that the subject property is exempt from Respondent's Fire Fighters and Police Officers Retirement Act millage. Therefore, there is no genuine issue of material fact to be decided in this case, and Petitioner is entitled to judgment as a matter of law.

VII. JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that this Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: April 19, 2006
Ejg

By: Jack Van Coevering