



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

FPT Pontiac Division LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 23-002206

City of Pontiac,
Respondent.

Presiding Judge
Mark Perry

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On January 30, 2024, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Respondent contends that the Tribunal lacks jurisdiction over the subject matter as contemplated by MCR 2.116(C)(4) and Tribunal rules.

Petitioner did not file a response to the Motion.

The Tribunal has reviewed the motion and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition is warranted at this time.

RESPONDENT'S CONTENTIONS

Respondent relies on Petitioner's failure to protest to the Board of Review (BOR) under MCL 205.735a(3) in support of its motion. Respondent states that no timely personal property statement was filed as required by MCL 205.735a(4) to permit consideration of Petitioner's claims. Respondent contends there was no timely delivery of the exemption application to the assessor or BOR under MCL 211.9m and MCL 211.9n. Respondent also states that it was sending the notices of assessment to the subject property for years. Respondent states that a new exemption filing was required under law for tax year 2023.

PETITIONER'S CONTENTIONS

Petitioner did not file a response to the motion. However, in the petition, Petitioner contends that the exemption application was mailed February 1, 2023, not received,

and then re-mailed on March 20, 2023. Petitioner also contends that the notice of assessment was sent to the subject property and not to Petitioner's corporate office.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.¹ In this case, Respondent moves for summary disposition under MCR 2.116(C)(4).

Dismissal under MCR 2.116(C)(4) is appropriate when the "court lacks jurisdiction of the subject matter." When presented with a motion pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties.² In addition, the evidence offered in support of or in opposition to a party's motion will "only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion."³ A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.⁴

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's motion under MCR 2.116(C)(4) and finds that granting the motion is warranted because Petitioner did not comply with the statutory requirement of claiming the exemption.

The filing of a claim for Eligible Manufacturing Personal Property (EMPP) and appeal of an effective claim denial is controlled by MCL 211.9m(2)(c), which states:

The combined document prescribed in this section must be completed and delivered to the assessor of the township or city in which the qualified new personal property is located by [February 21, 2023]. . . . For purposes of a combined document 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 subdivision. 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.

¹ See TTR 215.

² *Id.*

³ MCR 2.116(G)(6).

⁴ See *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).

Petitioner was statutorily required to complete and deliver the combined document to Respondent's assessor by February 21, 2023. Petitioner contends that the document was mailed in early February. It is un rebutted that Respondent did not receive the filing by the deadline and that there was no appeal directly to Respondent's March BOR. Delivery is not synonymous with mailing, and this contention made by Petitioner is therefore given no weight because the date upon which the exemption application was mailed is not relevant.

Petitioner also contends that the notice of assessment was improperly sent to the subject property rather than Petitioner's corporate office. Under the General Property Tax Act, an assessor is required to give a property owner notice of an increase in an assessment.⁵ Further, an assessor's requirement to serve a personal property statement upon a taxpayer does not affect Petitioner's requirement to deliver the exemption application by the statutory deadline. However, Petitioner has not demonstrated how failure to comply with these statutory requirements affected its ability to claim the exemption. Unlike a notice of assessment or personal property statement, there is no requirement for an assessor to send an EMPP exemption application to taxpayers. The Tribunal cannot find a finding in summary disposition about whether the assessor took steps reasonably calculated to inform Petitioner of the subject's 2023 assessment. Notwithstanding, this claim by Petitioner is therefore not a defense to the failure to comply with the filing requirement of MCL 211.9m(2)(c).

Neither the petition nor the amended petition raises any contentions with respect to valuation, and the Tribunal finds that EMPP was the only properly pending issue in this appeal. The Tribunal has no equitable power to waive or otherwise disregard a statutory requirement or filing deadline, and as a result, it has no authority to grant Petitioner the relief requested.⁶ Respondent's motion is granted, and dismissal is appropriate.

JUDGMENT

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

IT IS FURTHER ORDERED that the case is DISMISSED.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

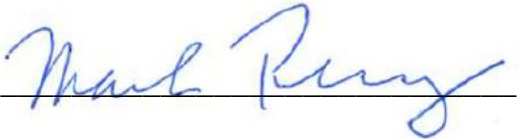
If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

⁵ MCL 211.24c.

⁶ The Tribunal's powers are limited to those authorized by statute and do not include powers of equity. See *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346 (1987), *Elec Data Sys Corp v Flint Twp*, 253 Mich App 538 (2002), and *VanderWerp v Plainfield Twp*, 278 Mich App 624 (2008).

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty or disabled veterans exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By 

Entered: February 28, 2024
bw

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk