

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

Michigan State Tax Commission,
Petitioner,

MTT Docket No. 295729

v

Marlette Township, et al,
Respondents.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

INTRODUCTION

On May 20, 2005, the Tribunal entered an Order of Default in the above-captioned case, placing Petitioner and Respondent Marlette Township, et al, in default for failing to file and exchange a prehearing statement. Petitioner filed its prehearing statement on June 7, 2003. Respondent did not file its prehearing statement. On March 28, 2007, the Tribunal issued a Default Hearing Scheduling Order. A default hearing, pursuant to TTR 247, was held on May 3, 2007. Petitioner was represented by Michael R. Bell, Assistant Attorney General. Respondents were not present.

BACKGROUND

On November 18, 2002, Petitioner filed a petition with the Tribunal asking the Tribunal to overturn the granting of a “hardship” exemption for the 2002 tax year by Respondent Marlette Township to Respondents Robert Walker, William Walker, and Connie Walker for the following properties:

Parcel No. 180-022-300-010-00, 5260 Frenchline Road, Marlette, MI owned by Robert Walker

Parcel No. 180-022-400-010-00, 1840 Wood Road, Marlette, MI owned by Robert and Rosemary Walker

Parcel No. 180-022-300-020-00, 5230 Frenchline Road, Marlette, MI owned by Robert Walker, William Walker, and Connie Walker

Parcel No. 180-026-200-010-00, 5260 Frenchline Road, Marlette, MI owned by Robert Walker

On December 16, 2002, Respondents William Walker and Robert Walker filed with the Tribunal, a letter addressed to the Department of Treasury stating that they “furnished all the information that the Marlette Township Board requested that pertained to the income for all parties involved.” On December 16, 2002, Respondent Marlette Township filed an answer to the petition. On January 31, 2003, Respondents Robert Walker, William Walker, and Connie Walker filed an answer to the petition.

On March 28, 2003, the Tribunal entered a Prehearing Order that required the parties to exchange and file prehearing statements on or before June 27, 2003. The Order was sent to Respondent Marlette Township but was not sent to Respondents Robert Walker, William Walker, or Connie Walker. Petitioner filed a prehearing statement on June 27, 2003.

Respondents failed to file and exchange prehearing statements. On December 23, 2003, the Tribunal entered an Order placing Respondent Marlette Township in default.

On March 31, 2004, Petitioner filed a Motion to Schedule Default Hearing. On July 14, 2004, the Tribunal vacated its Orders of March 28, 2003 and December 23, 2003, and ordered all

Respondents to file and exchange prehearing statements. The July 14, 2004 Order was sent to Respondents Marlette Township and to Respondents Robert Walker, William Walker, and Connie Walker. On May 20, 2005, the Tribunal entered an Order of Default, placing Petitioner and Respondent Marlette Township, et al, in default for failing to file and exchange a prehearing statement as required, and allowed Petitioners and Respondents 21 days to cure default. Respondents failed to timely cure the default.

The Tribunal entered an Order on December 16, 2005, dismissing the case as Petitioner did not timely cure the default. Petitioner filed a motion to set aside the default, to schedule a default hearing, and to vacate the December 16, 2005 dismissal stating that its prehearing statement had been filed on June 7, 2003. The Tribunal entered an Order granting Petitioner's motion on March 8, 2006. On March 28, 2007, the Tribunal issued a Default Hearing Scheduling Order.

PETITIONER'S CONTENTIONS

Petitioner offered 34 exhibits. (See Attachment A) All of Petitioner's exhibits were admitted.

Petitioner contends that the Marlette Board of Review "reduced the taxable values of the [subject] properties ...to \$0 at the request of Robert Walker, who claimed a 'hardship' exemption pursuant to MCL 211.7u."¹ Petitioner further contends that Respondent Marlette Township's Board of Review "erred in granting Respondent Robert Walker's request for 'hardship' exemption"² for the subject properties for tax year 2002 by "either failing to consider

¹ Petition

² Petition

the income of all the owners of the property at issue or ... by failing to consider the income of the recorded owner of the subject property.”³

Petitioner offered the testimony of Mr. Harold E. Anderson, administrative manager for the Michigan Department of Treasury, Bureau of Local Governments, State Tax Assessment Certification Division. Mr. Anderson testified that as part of his job responsibilities he will “receive information from [Petitioner’s] field staff, analyze it, and if appropriate, forward it on to the State Tax Commission for their action.”⁴ Mr. Anderson testified that he received materials from Mr. Norman Daniels, a field supervisor who “reviewed all of the actions that were conducted by various ... local townships ... in the administration of the General Property Tax Act.”⁵ Mr. Daniels also sent a letter recommending to Mr. Anderson that the State Tax Commission appeal the “apparent improper exemption to the Michigan Tax Tribunal”⁶ of the subject properties. Mr. Daniels asserted in individual letters related to each of the subject parcels that the

parcel is farmed as a single farm unit along with the additional four parcels, some of which are apparently owned jointly with William Walker. ... It does not seem reasonable to believe that nearly 320 acres of tillable farmland would generate an income of only \$1,789 as Mr. Walker indicated on his application for exemption.⁷

Petitioner offered into evidence copies of the “hardship” exemption applications filed by Robert Walker for the 2002 tax year listing himself as the owner of the four parcels at issue with an

³ Petition

⁴ Transcript, p12, ll 20-22

⁵ Transcript, p 11, ll 4-7

⁶ Petitioner’s Exhibit P-2

⁷ Petitioner’s Exhibit P-11

address of 5260 Frenchline Road.⁸ Property record cards for the subject properties were also submitted⁹ which provided the following information:

Parcel No. 180-022-300-020-00, lists the owners as “Walker Robert etal” and shows the address as 5260 Frenchline Road

Parcel No. 180-022-400-010-00, lists the owners as “Walker, Robert and Rosemary” and shows the address as 1840 Wood Road R#1.

Parcel No. 180-022-300-010-00, lists the owners as “Walker Robert etal” and shows the address as 5260 Frenchline Road

Parcel no. 180-026-200-010-00, lists the owner as Walker Robert and shows the address as 5260 Frenchline Road

Petitioner offered a map of the township with the subject properties outlined showing that they are all adjacent or contiguous and owned by Robert Walker or William Walker.¹⁰ Petitioner also offered into evidence the State of Michigan Farmland Development Rights Agreements entered into with the State, signed by Robert Walker, William Walker, and Connie Walker.¹¹ All individuals are identified in the Agreement as owners of Parcel Nos. 180-022-300-020-00 and 180-026-200-010-00.

Petitioner offered a copy of Form MI 1040CR-5, Farmland Preservation Tax Credit Claim, that used the Frenchline Road address and listed the subject property under three separate agreements, filed with Robert Walker’s Michigan individual income tax return. The MI 1040CR-5 lists, and is signed by, Robert Walker and William Walker as partners or co-owners of the

⁸ Petitioner’s Exhibit P-4

⁹ Petitioner’s Exhibits P-5, P-10, P-14, and P-18

¹⁰ Petitioner’s Exhibit P-20

¹¹ Petitioner’s Exhibits P-6 and P-19

property.¹² Robert Walker also listed Walker Farms as a partnership on the Schedule E attached to his federal income tax return for 2001.

Petitioner asserted that Respondents' income exceeded the federal poverty income guidelines and offered as evidence William and Connie Walker's 2001 Michigan joint Individual Income Tax Return with a copy of Form MI 1040CR-5, Farmland Preservation Tax Credit Claim, attached,¹³ that listed the same three separate agreements as listed on Robert Walker's MI-1040CR-5.¹⁴ That MI-1040CR-5 lists, and is signed by, Robert Walker and William Walker as partners or co-owners of the property. William and Connie Walker's Michigan joint Individual Income Tax Return uses the 1840 Wood Road address.

Petitioner asserts that Respondent Marlette Township was required by law to include the income of Robert Walker, William Walker, and Connie Walker when determining eligibility for the "hardship" exemption under MCL 211.7u for all four parcels. All three individuals lived on the properties and are joint owners and occupiers of the farm unit that is comprised of the four parcels at issue. Petitioner submitted as evidence the 2001 W-2's of William Walker and Connie Walker.¹⁵ Petitioner also submitted the 2001 Michigan and Federal Individual Income Tax Returns for all three Respondents.¹⁶

Petitioner submitted as evidence the federal income guidelines for 2002 which provides that for a person over 65 the limit is \$8,259. Mr. Anderson testified that Robert Walker's income "based

¹² Petitioner's Exhibit P-21,

¹³ Petitioner's exhibit P-30,

¹⁴ Petitioner's Exhibit P-30

¹⁵ Petitioner's Exhibits P-28 and P-29

¹⁶ Petitioner's Exhibits P-21, P-22, P-30, and P-31

upon social security benefits, what he identifies as profit from farmland and then the information we have from the tax return of gross farm income ... equals approximately \$40,000.”¹⁷ Petitioner added William and Connie Walker’s income, and testified that even if the members of the household were increased to four, bringing the maximum allowable to at most, \$18,100, the total income of the individuals who owned and occupied the property was well above the federal guidelines.

Petitioner contends that, contrary to the statutory requirement, the township did not consider Robert Walker’s, William Walker’s, and Connie Walker’s assets when determining eligibility for the “hardship” exemption. Further, Petitioner asserted that the true cash value of the farm unit is over \$120,000, the taxable value of Robert’s home as reported on his MI-1040CR is \$214,613, and the true cash value of Parcel No. 180-026-200-010-00 alone is \$114,884.¹⁸ Based on this, Petitioner asserts that Robert Walker’s individual assets exceeds the asset limit as do the combined assets of William Walker and Connie Walker. Further, whether the assets and income of any one of the owners individually are considered, or the combined assets and income of the partners is considered, the income and asset limits are exceeded.

RESPONDENT’S CONTENTION

Respondent Marlette Township did not appear or submit evidence. Respondents Robert Walker, William Walker, and Connie Walker did not appear or submit evidence.

¹⁷ Transcript p 59, ll 21-25

¹⁸ Petitioner’s exhibit P-18

Respondent, Marlette Township, in its answer, contends that the Board of Review properly granted Robert Walker's "hardship" exemption under MCL 211.7u for 2002. The township has provided no evidence or basis for this contention.

FINDINGS OF FACTS

Robert Walker is the owner, individually or with William Walker or Connie Walker, of the farm unit comprised of the four subject parcels. In 2002, Robert Walker applied for a "hardship" exemption for the parcels. The parcels are contiguous. Parcel No. 180-022-300-020-00, address 5260 Frenchline Road, Marlette, MI, is owned by Robert Walker and William Walker and Connie Walker, "Walker Robert etal."¹⁹ Parcel No. 180-022-400-010-00, address 1840 Wood Road R#1, Marlette, MI, is owned by Robert Walker and Rosemary Walker.²⁰ Parcel No. 180-022-300-010-00, address 5260 Frenchline Road, Marlette, MI, is owned by Robert Walker, William Walker, and Connie Walker, "Walker Robert etal."²¹ Parcel No. 180-026-100-010-00, address 5260 Frenchline Road, Marlette, MI, is owned by Robert Walker.²²

Based on the testimony and evidence presented, the Tribunal finds, for the tax year at issue, that,

- Robert Walker owned and occupied the house and sufficient land to support that house on the property at 5260 Frenchline Road, Marlette, MI; parcel numbers 180-022-300-020-00, 180-022-300-010-00, and 180-026-100-010-00. These parcels are contiguous and together constitute the principal residence of Robert Walker. William Walker and Connie Walker do not occupy the property at 5260

¹⁹ Petitioner's Exhibits P-5

²⁰ Petitioner's Exhibits P-10

²¹ Petitioner's Exhibits P-14

²² Petitioner's Exhibits P-18

Frenchline Road, Marlette, MI; parcel numbers 180-022-300-020-00, 180-022-300-010-00, and 180-026-100-010-00.

- William Walker owns, and he and Connie Walker occupy the house and sufficient land to support that house on the property at 1840 Wood Road R#1, Marlette, MI; parcel number 180-022-400-010-00. Robert Walker does not occupy the property at 1840 Wood Road R#1, Marlette, MI; parcel number 180-022-400-010-00.
- All of the parcels have 100% principal residence exemptions. All four of the parcels are used for agricultural purposes. Robert Walker and William Walker have Farmland and Open Space Preservation Agreements with the State of Michigan for all of the properties.
- The 2001 MI-1040CR-5 submitted as an attachment to the 2001 Individual Income Tax Return of Robert Walker indicates that the property designated by address Frenchline Rd, Marlette MI 48453 is jointly owned by Robert Walker and William Walker. Each individual owns a 50% share.
- The 2001 MI-1040CR-5 submitted as an attachment to the 2001 Individual Income Tax Return of William Walker and Connie Walker indicates that the property designated by address 1840 Wood Road R#1, Marlette MI 48453 is jointly owned by Robert Walker and William Walker. Each individual owns a 50% share.

- Based upon W-2's, Michigan Individual Income Tax Returns, and Federal Income Tax Returns, the Tribunal finds that for tax year 2001, Robert Walker had adjusted gross income of \$3,975, as reported on his federal 1040. This figure is consistent with income reported on his Michigan 1040.
- Based upon W-2's, Michigan Individual Income Tax Returns, and Federal Income Tax Returns, the Tribunal finds that for tax year 2001, William Walker and Connie Walker had combined adjusted gross income of \$21,847. This figure is consistent with income reported on his Michigan 1040.
- The amounts reported on lines 41 of Respondents' federal returns is "gross farming and fishing income" reported on Form 4835 and Schedule K-1. That form and schedule were not provided and Petitioner was unable even to explain how those values were determined or reconciled. The Tribunal will not include these unexplained amounts in income.
- Petitioner's evidence as to income of Respondents William Walker or Robert Walker is insufficient to determine the actual farming income generated by or separately attributable to each of the parcels or to each of Respondents William Walker or Robert Walker.

- As a joint owner of all four parcels, the value of all of the parcels are included in the assets of Robert Walker.
- As a joint owner of all four parcels, the value of all of the parcels are included in the assets of William Walker.
- On February 18, 2002, Respondent Marlette Township adopted the “Poverty Guidelines Resolution (2002) using the MTA form and set \$10,000 as total net assets.”²³ The federal poverty guidelines for 2002 set the poverty threshold for 1 person over 65 at \$8,259, and the poverty threshold for three people at \$13,470.

CONCLUSIONS OF LAW

TTR 205.1247 provides:

- (1) If a party has failed to plead, appear, or otherwise proceed as provided by these rules or as required by the Tribunal, then the party may be held in default by the tribunal on motion of another party or on the initiative of the Tribunal. A party placed in default shall cure the default as provided by the order placing the party in default and file a motion to set aside the default accompanied by the appropriate fee within 21 days of entry of the order placing the party in default or as otherwise ordered by the Tribunal. Failure to comply with an order of default may result in the dismissal of the case or the scheduling of a default hearing as provided in this rule.
- (2) For purposes of this rule, “default hearing” means a hearing at which the defaulted party is precluded from presenting any testimony or submitting any evidence not submitted to the Tribunal before the entry of the order placing the party in default and may not, unless otherwise ordered by the Tribunal, examine the other party’s witness.

As such, the Tribunal decides this matter based only on the file and testimony and evidence presented by Petitioner at hearing.

²³ Petitioner’s Exhibits P-32

Respondent Robert Walker was granted a “hardship” exemption by Respondent Marlette Township Board of Review for all four subject parcels for tax year 2002, pursuant to MCL 211.7u, which provides, in pertinent part:

- (1) The principal residence of persons who in the judgment of the supervisor and board of review, by reason of poverty are unable to contribute toward the public charges is eligible for exemption in whole or in part from taxation under this act.
- (2) To be eligible under this section, a person shall do all of the following on an annual basis...
 - (a) Be an owner of and occupy as principal residence the property for which an exemption is requested.
 - ...
 - (e) Meet the federal poverty guidelines updated annually in the federal register by the United States department of health and human services under authority of section 673 of subtitle B of Title VI of the omnibus budget reconciliation act of 1981, Public Law 97-35, 42 U.S. C. 9902, or alternative guidelines adopted by the governing body of the local assessing unit provided the alternative guidelines do not provide income eligibility requirements less than the federal guidelines.
 - ...
- (4) The governing body of the local assessing unit shall determine and make available to the public the policy and guidelines the local assessing unit uses for the granting of exemptions under this section. The guidelines shall include but not be limited to the specific income and asset levels of the claimant and total household income and assets.
- (5) The board of review shall follow the policy and guidelines of the local assessing unit in granting or denying an exemption under this section unless the board of review determines there are substantial and compelling reasons why there should be a deviation from the policy and guidelines and the substantial and compelling reasons are communicated in writing to the claimant.

“In general, tax exemption statutes are to be strictly construed in favor of the taxing authority.”

Michigan United Conservation Clubs v Lansing Twp, 423 Mich 661, 664 (1985); *Ladies Literary*

Club v Grand Rapids, 409 Mich 748, 753-754 (1980). “The petitioner must prove, by a preponderance of the evidence, that the taxpayer is not a member of an already exempt class.”

ProMed Healthcare v Kalamazoo, 249 Mich App 490, 495 (2002). This matter is distinguishable from the general exemption appeal in that the local taxing authority granted the exemption requested and the State, through the State Tax Commission, appealed the determination of Respondent taxing authority. In that regard, the exemption, construed in favor of the taxing authority, here granted, has been appealed.

MCL 211.7u, requires that the individual seeking the exemption “[b]e an owner of and occupy as principal residence the property for which an exemption is requested.” Petitioner has provided sufficient evidence to support the contention that Robert Walker and William Walker are joint owners of all four subject parcels. Respondent Robert Walker occupies, as his principal residence, the house and sufficient land to support that house on parcel numbers 180-022-300-020-00, 180-022-300-010-00, and 180-026-100-010-00. The remainder of the land of those parcels is part of the farming enterprise owned jointly by Respondents Robert Walker and William Walker. William Walker and Connie Walker occupy, as their principal residence, the house and sufficient land to support that house on parcel numbers 180-022-400-010-00. The remainder of the land of that parcel is part of the farming enterprise owned jointly by Respondents Robert Walker and William Walker.

Petitioner has provided evidence that Respondents Robert Walker, William Walker, and Connie Walker had income during the year at issue. Based on W-2’s and Federal and Michigan Individual Income Tax Returns, Robert Walker had adjusted gross income of \$3,975 for tax year

2001. That amount does not exceed the federal poverty guidelines for the tax year at issue.

Respondent Robert Walker would, based on income alone, qualify for the “hardship” exemption for Parcel No. 180-022-400-010-00 for the 2002 tax year. William Walker and Connie Walker reported adjusted gross income of \$21,847 for tax year 2001. That amount exceeds the federal poverty guidelines for the tax year at issue. Based on income alone, William Walker and Connie Walker do not qualify for the “hardship” exemption for Parcel Nos. 180-022-300-020-00, 180-022-300-010-00, and 180-026-100-010-00 for the 2002 tax year.

However, Petitioner has not provided sufficient reliable evidence to allow the Tribunal to determine what portion of the parcels are principal residence and what percentage is devoted to the agricultural endeavor. Income from the farming enterprise is attributable to both Robert Walker and William Walker as joint owners of the land and partners in the farming enterprise. It is also likely that the total for each individual of personal income and income from the farming enterprise, would exceed the income eligibility for an exemption under MCL 211.7u. However, the statement by Mr. Anderson that “[i]t does not seem reasonable to believe that nearly 320 acres of tillable farmland would generate an income of only \$1,789”²⁴ is not sufficient reliable evidence of the amount of income derived from the farming enterprise conducted on all four parcels. Nor is the amount listed on Schedule E of Respondents’ 2001 Federal Individual Income Tax Return, without the underlying Form 4835 and Schedule K-1 sufficiently reliable as to the amount of farming income required to be included in income for exemption purposes.

²⁴ Petitioner’s exhibit P-7

Under MCL 211.7u (5), the Board of Review must follow the local governing unit's policy or guidelines in granting or denying the exemption. Respondent Marlette Township failed to properly follow the local governing unit's policy and guidelines in applying the asset test required for determining eligibility for an exemption. Additionally, there is no evidence of any compelling reason for Respondent's Board of Review to deviate from the local governing unit's policy or guidelines in granting the exemption. Without evidence of a compelling reason to deviate from the local governing unit's policy or guidelines in granting or denying the exemption, the Tribunal uses the published standards in its review.

As joint owners of all four parcels the value of that property, as reflected on the 2002 Marlette Township Assessment Roll, are assets of both Robert Walker and William Walker. That total value exceeds the total net asset limit as adopted by Marlette Township.

Based upon the above findings of fact and the applicable of law, the Tribunal finds that the Board of Review improperly granted the taxpayer a "hardship" exemption under MCL 211.7u for 2002. The Tribunal concludes that a "hardship" exemption under MCL 211.7u for 2002 is denied.

JUDGMENT

IT IS ORDERED that Petitioner's request for a "hardship" exemption for the subject property for tax year 2002 is DENIED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the

denial of Petitioner's "hardship" exemption for tax year 2002 within 20 days of the entry of the Final Opinion and Judgment. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid 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. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (ii) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (iii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (iv) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (v) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (vi) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (vii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (viii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (ix) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

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This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: December 19, 2008

By: Rachel Asbury, Tribunal Member