

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

S.L. Husain Hamzavi,
Petitioner,

v

MTT Docket No. 382110

Department of Treasury,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER OF DISMISSAL

INTRODUCTION

Petitioner, S.L. Husain Hamzavi, is appealing Final Assessment R028505 assessing Petitioner for use tax and interest in the amount of \$73,800.79 for tax period January 1, 2004 through December 31, 2008. Petitioner filed its appeal of this assessment on August 31, 2009. On October 18, 2010, Respondent filed a Motion for Summary Disposition, under MCR 2.116(C)(4). Respondent contends that the Tribunal lacks jurisdiction over the above-captioned appeal because Petitioner filed its petition more than a year after the issuance of the assessment and therefore beyond the 35 day statutory limit. Petitioner did not file a response to the Motion. The Tribunal agrees with Respondent and finds that it lacks jurisdiction over Petitioner's appeal. As such, the above-captioned appeal is dismissed.

RESPONDENT'S CONTENTIONS

Respondent contends that "Petitioner filed its Petition on or after 9/20/10, more than a year after issuance of the 8/11/09 Final Assessment, and well beyond the 35 day statutory limit. Because Petitioner's Petition is untimely, this Honorable Tribunal does not have jurisdiction to hear this case." Respondent's Brief in Support of its Motion for Summary Disposition, page 3.

Respondent also argues that pursuant to MCL 205.22 Petitioner was required to pay the uncontested portion of the assessment as a prerequisite to the appeal. Respondent states that "[i]n its Petition, Petitioner admits that it does not contest the full amount of the assessment by

stating that “the correct tax should be \$16,728.91 which is the taxable expense purchases.” Respondent’s Brief in Support of its Motion for Summary Disposition, page 3. Accordingly, Respondent contends that the Tribunal lacks jurisdiction over the above-captioned appeal because Petitioner failed to pay the uncontested amount of the use tax.

FINDINGS OF FACT

Petitioner is challenging Final Assessment No. R028505, issued on September 11, 2009, which determined a use tax deficiency based on an audit conducted by Respondent for the period from January 1, 2004 through December 31, 2008. The Final Assessment states Petitioner is liable for use tax in the amount of \$60,243.00 and interest in the amount of \$13,557.79.

Respondent referenced and attached, as Exhibit A, a petition purportedly filed by Petitioner. The petition indicates that Petitioner is appealing for a redetermination of the Final Assessment. The petition further states that “[t]he correct tax should be \$16,728.91 which is the taxable expense purchases.”

Petitioner filed its initial letter of appeal on August 31, 2009. Petitioner subsequently filed a Small Claims Petition Form on March 19, 2010. The Tribunal has no record of ever receiving the petition attached to Respondent’s Motion as Exhibit A.

APPLICABLE LAW

Respondent moves for summary disposition pursuant to MCR 2.116(C)(4). This Court Rule states that a motion for summary disposition is appropriate where the “. . . court lacks jurisdiction of the subject matter.” MCR 2.116(C)(4). When presented with a motion for summary disposition 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. MCR 2.116(G)(5). 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. MCR 2.116(G)(6). A motion for summary disposition pursuant to MCR 2.116(C)(4) is appropriate where the

plaintiff has failed to exhaust administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43; 620 NW2d 546 (2000). Furthermore:

A motion under MCR 2.116(C)(4), alleging that the court lacks subject matter jurisdiction, raises an issue of law. The issue of subject matter jurisdiction may be raised at any time, even for the first time on appeal. *McCleese v Todd*, 232 Mich App 623, 627; 591 NW2d 375 (1998) (“Lack of subject matter jurisdiction may be raised at any time.”); *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997) (“Although the jurisdictional issue here was never resolved by the trial court, a challenge to subject-matter jurisdiction may be raised at any time, even for the first time on appeal.”). When a court lacks jurisdiction over the subject matter, any action it takes, other than to dismiss the case, is absolutely void. *McCleese*, at 628. The trial court’s determination will be reviewed de novo by the appellate court to determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether affidavits and other proofs show that there was no genuine issue of material fact. *See Cork v Applebee’s of Michigan, Inc*, 239 Mich App 311; 608 NW2d 62 (2000) (“When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show that there was no genuine issue of material fact.”); *Walker v Johnson & Johnson Vision Products, Inc*, 217 Mich App 705; 552 NW2d 679 (1996); *Faulkner v Flowers*, 206 Mich App 562; 522 NW2d 700 (1994); *Department of Natural Resources v Holloway Construction Co*, 191 Mich App 704; 478 NW2d 677 (1991). 1 Longhofer, Michigan Court Rules Practice § 2116.12, p 246A.

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent’s Motion for Summary Disposition under the criteria for MCR 2.116(C)(4) and, based on the pleadings and other documentary evidence filed, determines that granting Respondent’s Motion for Summary Disposition under MCR 2.116(C)(4) is appropriate. The Tribunal further finds it appropriate to dismiss the above-captioned appeal.

At issue is whether the Tribunal has jurisdiction over Petitioner’s appeal. MCL 205.22 governs the Tribunal’s jurisdiction and states that “[a] taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days. . . .” MCL 205.22(1). Here, the Tribunal’s jurisdiction was not

properly invoked as Petitioner filed his initial letter of appeal beyond 35 days of the issuance of Final Assessment R028505.

Further, Respondent's claim that the Tribunal lacks jurisdiction over Petitioner's appeal because Petitioner failed to pay the uncontested portion of the tax, as required by MCL 205.22, is without merit. Pursuant to MCL 205.22(1), "[t]he uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal." Although the Tribunal has no record of Petitioner submitting the petition attached to Respondent's Motion as Exhibit A, it states that Petitioner believes the correct tax should be \$16,728.91.¹ If, in fact, Petitioner believed the correct tax should be this amount, he was required to pay this uncontested amount before the Tribunal could acquire jurisdiction over the appeal.

For the reasons set forth herein, granting Respondent's Motion, under MCR 2.116(C)(4), is appropriate.

JUDGMENT

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

IT IS FURTHER ORDERED that this case is DISMISSED.

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

MICHIGAN TAX TRIBUNAL

Entered: March 11, 2011

By: Steven H. Lasher

¹ On August 23, 2010, the Tribunal entered an Order Placing Petitioner in Default because Petitioner's appeal did not qualify for the Small Claims Division since the amount at issue exceeds the Small Claims jurisdictional limits as described in TTR 310. The Order required Petitioner to file an Entire Tribunal petition and proof of service within 21 days of the entry of the Order. Tribunal records indicate that Petitioner did not file an Entire Tribunal petition; however, although speculative, the petition attached to Respondent's Motion, as Exhibit A, may have been the Entire Tribunal petition required by the Tribunal's April 23, 2010 Order. Nevertheless, Petitioner did not file its petition with the Tribunal and therefore did not comply with the Tribunal's Order.