

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

Community College District of the County of Macomb,  
Petitioner,

v

MTT Docket No. 390460

Charter Township of Clinton,  
Respondent.

Tribunal Judge Presiding  
Kimbal R. Smith III

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY  
DISPOSITION

**I. INTRODUCTION**

Petitioner, Community College District of the County of Macomb, is appealing the assessment of property taxes as determined by Respondent, Charter Township of Clinton, for the 2010 tax year. On July 2, 2010, Petitioner filed a motion requesting the Tribunal grant summary disposition in its favor in the above-captioned case pursuant to TTR 230, MCR 2.116(b)(1), and MCR 2.116(C)(10). Petitioner contends it is exempt from taxation under MCL 389.145, and that it is not liable for any amount of taxes for the 2010 tax year. On August 26, 2010, Respondent filed a response to Petitioner's Motion for Summary Disposition. Respondent contends that Petitioner's Board of Directors is acting outside the scope of its authority under 389.121, and that the property is subject to taxation because it is being used for non-educational purposes. The Tribunal finds

Petitioner is exempt from taxation under MCL 389.145 because it was created under the Community College Act and MCL 389.145 will govern, as provided by MCL 389.101.

## **II. BACKGROUND**

Petitioner purchased the subject property in 2004 to house administrative staff. The prior owner had a lease agreement encumbering the property, which was assigned to Petitioner as part of the purchase. Petitioner and the Lessee, Macomb Community Bank (now Michigan Commerce Bank), extended and amended the lease to fit the Lessee's occupation of the building. Macomb Community Bank (now Michigan Commerce Bank) occupies 2,024 square feet of the 37,336 square feet available on the property.

Prior to 2010, Petitioner's property was exempt from taxation. In 2010, Respondent removed the exemption from the assessment roll, and assessed taxes to Petitioner as due. Petitioner filed this appeal with the Tribunal contending that Respondent erroneously determined its tax liability under MCL 211.7n, based upon its exemption from tax liability under MCL 389.145.

## **III. PETITIONER'S CONTENTIONS**

Petitioner contends that it is a community college district as established by the Community College Act of 1966, Public Act 331 of 1966, and is the owner of record for the property at issue. Petitioner contends that, as a community college, it

is exempt from property taxes pursuant to MCL 389.145. “The property of the community college district shall be exempt from all taxation and assessment, and no writ of attachment or writ of execution shall be levied upon the property thereof.” MCL 389.145. Petitioner claims MCL 211.7n is not applicable because Macomb Community College (MCC) was created under a specific act, and as such, qualifies for exemption under a more specific statute. In support of this claim, Petitioner cites to Attorney General Opinion 1948, No. 845, November 1, 1948, and the supporting cases. In the opinion, the Attorney General addressed the issue of whether a specific exemption would take precedence or if the general language of the statute would preside. The Attorney General relied upon *Board of Education v Blondell*, 251 Mich 528, 532; 232 NW 375 (1930), in which the court determined the particular prevails over the general. *Id.* at 532. See also *Kassab v Michigan Basic Property Insurance Association*, 441 Mich 443; 491 NW2d 545 (1992); *Miller v Allstate Insurance Company*, 481 Mich 601; 751 NW2d 463 (2008); *Jones v Enterel, Inc*, 467 Mich 266; 650 NW2d 224 (2002).

Further, Petitioner contends that Respondent should be seeking to collect taxes from a different party. Petitioner claims Respondent is neglecting to apply the Lessee-Use tax under MCL 211.181 and 211.182, and that Respondent should be taxing the lessee. MCL 211.181 states that

Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

Petitioner believes Respondent could use this statute to collect the amount of taxes on the percentage of the property used for for-profit purposes from the lessee.

#### **IV. RESPONDENT'S CONTENTIONS**

Respondent contends that Petitioner does not qualify under MCL 389.145 for exemption from property taxes. In support of its contention, Respondent claims that the exemption is "premised upon the understanding that Community College property is to be used for educational purposes or related educational purposes."

Respondent believes that because the property is used by a for-profit organization, it is in violation of the purpose of the Community College Act and results in the loss of the tax exempt status. Respondent contends that Macomb Community College's Board of Directors acted outside its authorized authority by leasing the property to a for-profit organization. Respondent contends that the Board of Trustees is "limited and restricted to those powers granted under MCL 389.121."

MCL 389.121 lists the general powers of the Board of Trustees:

The Board of Trustees may do all of the following:

(a) Locate, acquire, purchase, or lease in the name of the community college district a site or sites within or without the territory of the

community college district for college buildings, libraries, agricultural farms, athletic fields, playgrounds, stadiums, gymnasiums, auditoriums, parking areas, residence halls, and supporting facilities as may be necessary; purchase, lease, acquire, erect or build and equip buildings, structures, and other improvements for college or area vocational-technical education buildings, libraries, agricultural farms, athletic fields, playgrounds, stadiums, gymnasiums, auditoriums, parking areas, residence halls, and supporting facilities as may be necessary; enter into installment purchase contracts for real or personal property; pay for real or personal property out of the funds of the community college district provided for that purpose; sell or exchange any real or personal property of the community college district that is no longer required for school purposes, and give proper deeds, bills of sale, or other instruments passing title to the real or personal property.

In support of this contention, Respondent cites Attorney General Opinion 1980, No. 5826, P. 1108, where the Attorney General held the Board of Directors for Wayne State Community College did not have authority to lease buildings for purposes not germane to the educational functions of the community college.

Respondent comparatively cites to MCL 211.7n to show the consistency in legislation and the Attorney General's opinion. MCL 211.7n states

Real estate or personal property owned and occupied by . . . educational . . . institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes which the institutions were incorporated is exempt from taxation under this act.

Using MCL 211.7n, Respondent contends “[i]f an educational institution is allowed tax exemptions on its property when used for educational purposes but not

allowed said exemption when said property is not used for educational purposes germane to the function of the institution, said property is to be taxed.”

## **V. FINDINGS OF FACT**

Petitioner brought MTT Docket No. 390460 to appeal the assessment and applicability of taxes against its property and for a determination of whether it is exempt from ad valorem property taxes. It is undisputed that the subject property at issue is Parcel No.16-11-06-126-011, located at 16000 Hall Road, Clinton Township, Michigan. The property is classified for taxation purposes as commercial property, and the owner of record is Community College District of the County of Macomb. Petitioner, Community College District of the County of Macomb, is a community college district as established by Community College Act of 1966, Public Act 331 of 1966. The property has a history of being tax-exempt since its purchase in 2005. In 2010, Respondent assessed taxes on the property.

The property is an office building with approximately 37,336 square feet of available space. When the property was purchased by Petitioner, it was subject to a lease between the prior owner and Macomb Community Bank (“Lessee”). The lease provided Macomb Community Bank with approximately 7,571 square feet of space to occupy, and remains in effect. On February 28, 2010, Petitioner and Lessee amended the lease to allow Lessee to move the operation into a smaller

suite. Macomb Community Bank now occupies 2,024 square feet of space of the subject property.

## **VI. APPLICABLE LAW**

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated “[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.” Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991). If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party, MCR 2.116(I)(2), *Washburn v Michailoff*, 240 Mich App 669; 613 NW 2d 405 (2000).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by

the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

## VII. CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10), and based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting Petitioner's Motion is appropriate. Consequently, the Tribunal concludes that the pleadings and documentary evidence prove that there is no genuine issue with

respect to any material fact. Specifically, the Tribunal concludes that the property at issue here is owned by a Community College District, as defined by Act 331 of 1966, and therefore, is exempt from property taxes for the 2010 tax year. Thus, Petitioner is entitled to summary disposition as a matter of law under MCR 2.116(C)(10).

The Tribunal only has the authority to apply the plain meaning of the statute:

The primary goal of judicial interpretation of statutes is to discern and give effect to 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. *Gladych v New Family Homes, Inc*, 468 Mich. 594, 597; 664 NW2d 705 (2003); *In re Quintero Estate*, 224 MichApp 682, 692-693; 569 NW2d 889 (1997). It is a fundamental principle that a clear and unambiguous statute leaves no room for judicial construction or interpretation. *Gladych, supra* at 597; 664 NW2d 705; *People v. McIntire*, 461 Mich 147, 152-153; 599 NW2d 102 (1999). "When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to *apply* the terms of the statute to the circumstances in a particular case." *Id.* at 153, 599 N.W.2d 102, quoting *People v. McIntire*, 232 Mich.App. 71, 119, 591 N.W.2d 231 (1998) (Young, P.J., concurring in part and dissenting in part) (emphasis in the original). Thus, this Court "may engage in judicial construction only if it determines that statutory language is ambiguous." *Gilbert v. Second Injury Fund*, 463 Mich. 866, 867, 616 N.W.2d 161 (2000).

*Niles Twp v Berrien County Bd of Com'rs*, 261 Mich App 308, 313; 683 NW2d 148 (2004). Both Petitioner and Respondent cite to Attorney General Opinions for the Tribunal to consider. The Attorney General Opinions only have persuasive authority on the Tribunal's interpretation of a statute. However, the Tribunal finds

that these opinions are superfluous in this matter. The plain language of the statute is enough to determine the outcome of this appeal.

Act 331 of 1966, commonly referred to as the Community College Act of 1966, was enacted to revise and consolidate the law relating to community colleges by “implement[ing] section 7 of article 8 of the state constitution, and shall be construed as being the charter of community colleges established and operating hereunder, and as determining the tax limitation of such colleges in accordance with section 6 of article 9 of the constitution.” MCL 389.191. The scope of the Community College Act is set out in MCL 389.101, which provides “[e]ach community college district shall be subject to and governed by the provisions of part 2 except as to those matters which are specifically or by necessary implication provided for in the particular chapter relative to the class or kind of community college district to which the district belongs.” This means that unless there is a specific provision addressing a certain type of community college, the provisions of Part 2 of Act 311 of 1966 will control. Part 2 of Act 311 consists of all statutes from 389.101 through 389.195. Consequently, MCL 389.121 and MCL 389.145 both fall within the purview of Part 2 of Act 311 of 1966 and will apply to community colleges.

The dispute here is an exemption from property taxes. Respondent contends the Board of Trustees has no authority under MCL 389.121 to make leases, and

because the Board of Trustees leased out a portion of the building to a bank, Petitioner is liable for taxes. Petitioner argues that such an interpretation of MCL 389.121 is inconsistent with the intent of MCL 211.7n. Petitioner also contends that the exemption comes straight from MCL 389.145. The Tribunal finds that Respondent's contentions that MCL 389.121 and MCL 211.7n apply are inconsistent with the plain meaning of the law.

Respondent contends that because the Board of Trustees does not have authority under MCL 389.121 to make leases, it is not exempt from property taxes under MCL 211.7n. MCL 389.121 allows the Community College to lease property from someone else solely for educational or related purposes. Nowhere in the statute does it expressly allow or prohibit the board of trustees to *make* leases, or be the Lessor, with for-profit organizations. For the Tribunal to infer either would be an abuse of its judicial discretion, and is not pertinent to the outcome of this case.

In addition, MCL 211.7n applies to real estate or personal property owned and occupied by educational institutions solely for the purposes for which the institutions were incorporated. While a community college is an educational institution and would qualify under MCL 211.7n, its existence originated under the Community College Act. Consequently, under the plain meaning doctrine discussed above, MCL 389.101 provides that the statutes within the Community

College Act will control unless another statute specifically governs the class or type of community college. Respondent has not provided the Tribunal with any such statute that would directly govern Petitioner's type of community college, nor did the Tribunal locate a more applicable statute.

However, as Petitioner correctly contended, under the Community College Act, MCL 389.145 governs the taxation of property owned by a community college. MCL 389.145 explicitly states that:

The property of the community college district shall be exempt from **all taxation and assessment**, and no writ of attachment or writ of execution shall be levied upon the property thereof. The board of trustees may enter into an agreement with any city, village or township or with the board of county road commissioners whereby the community college district agrees to pay special assessments for local improvements levied against any community college district property irrespective of the use to which the property is put. [Emphasis added].

Since MCL 389.145 is within the Community College Act, it is the most applicable statute unless another statute directly addresses this type of community college as provided in MCL 389.101. Further, there is no mention in the statute that the exemption of the community college district is contingent upon the property being used for educational purposes germane to the function of the institution, as Respondent contends. To interpret such would be contrary to the plain meaning of the statute and outside the scope of the Tribunal's authority.

Petitioner, in addition to the argument that MCL 389.145 governed, cited MCL 211.181 as evidence that Respondent was seeking to collect taxes from the

incorrect party. MCL 211.181 provides for the lessee to be responsible for taxes when renting tax-exempt property for a business conducted for-profit. See above. As Petitioner is exempt from taxation on the property under MCL 389.145 and the property is used by a bank in connection with business for-profit, the lessee, if anyone, is liable for taxes on this property.

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. The Tribunal finds MCL 389.101 and MCL 389.145 to be unambiguous. Petitioner is exempt from taxation based upon its creation under Public Act 331 of 1966. Therefore, Petitioner's Taxable Value for the 2010 tax year is 0.

### **VIII. JUDGMENT**

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

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

MICHIGAN TAX TRIBUNAL

Entered: October 12, 2010  
rmo

By: Kimbal R. Smith III