

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
MICHIGAN TAX TRIBUNAL

Lease Plan USA, Inc.,  
Petitioner,

v

MTT Docket No. 448637

Michigan Department of Treasury,  
Respondent.

Tribunal Judge Presiding  
Kimbal R. Smith III

ORDER GRANTING RESPONDENT'S  
MOTION FOR SUMMARY DISPOSITION

ORDER OF DISMISSAL

On August 13, 2012, Respondent filed a Motion for Summary Disposition under MCR 2.116(C)(4). In its Motion, Respondent contends that the Final Assessment was issued on August 2, 2012. An appeal was received by the Tribunal on September 21, 2012, but Respondent first received a petition on October 28, 2012, with no proof of service. Respondent states that the Tribunal lacks subject matter jurisdiction because Petitioner was required to file an appeal within 35 days of the final determination under MCL 205.22(1). "If the petitioner does not appeal the final determination to the Tribunal within 35 days, the Tribunal does not have jurisdiction over the appeal." Respondent further states that the final assessment was served via certified mail and delivery was confirmed on August 3, 2012. Respondent's certified mail log is "competent, material, and substantial evidence that the Department properly served the Assessment on the Petitioner."

Petitioner has not filed a response to the Motion.

The Tribunal, having considered the Motion and the case file, finds that Respondent moves for summary disposition under MCR 2.116(C)(4). This Court Rule states that a Motion for Summary Disposition is appropriate when 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*, 232 Mich App at 628; 591 NW2d at 377. 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.

After considering Respondent's Motion, the Tribunal determines that the grounds for summary disposition under MCR 2.116(C)(4) have been met. Pursuant to MCL 205.22(1) and 205.735a(6), an appeal of a final assessment issued by the

Department of Treasury is required to be filed within 35 days of the date of the final assessment. The final assessment at issue was dated August 2, 2012. The certified mail log and confirmation, attached to Respondent's Motion as Exhibit 2, shows that the final assessment was delivered to Petitioner on August 3, 2012. Petitioner filed a letter with the Tribunal, indicating its intent to appeal the assessment, on September 21, 2012. Petitioner indicated in the letter that an appeal was also being filed with the Court of Claims (which has a 90 day timeframe for appealing). Petitioner's appeal to the Tribunal was not filed within 35 days of August 2, 2012. The time provisions governing the period for filing a claim are jurisdictional, and if the Tribunal lacks jurisdiction, it cannot act except to dismiss the appeal. See *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538; 656 NW2d 215 (2002). As such, Petitioner has failed to invoke the Tribunal's jurisdiction and the Tribunal has no authority over Petitioner's appeal.

In addition to failing to timely appeal the final assessment and properly invoke the Tribunal's jurisdiction, Petitioner has also failed to cure the default entered on November 2, 2012, requiring Petitioner to submit a proof of service on the opposing party within 21 days or the case will be dismissed. A proof of service in compliance with TTR 208 has never been filed with the Tribunal. Even if the Tribunal had jurisdiction over this appeal, the appeal would still be subject to dismissal for failure to cure the default. Therefore,

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

IT IS FURTHER ORDERED that this appeal is DISMISSED.

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

MICHIGAN TAX TRIBUNAL

By: Kimbal R. Smith III

Entered: January 15, 2013