

STATE OF MICHIGAN
COURT OF APPEALS

ADAC PLASTICS, INC.,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee.

UNPUBLISHED

July 27, 2006

No. 259411

Tax Tribunal

LC No. 00-307524

Before: Talbot, P.J., and Owens and Murray, JJ.

PER CURIAM.

Petitioner appeals by right from an order of the Tax Tribunal granting summary disposition in favor of respondent pursuant to MCR 2.116(C)(7). The issue presented on appeal is the applicable date of expiration of the period of limitation on an amended request for a tax refund under MCL 205.27a. We affirm.

The material facts are not in dispute. On or about April 30, 2002, petitioner mailed an amended Single Business Tax (SBT) return to respondent requesting a tax refund of \$178,128 petitioner claimed it overpaid for fiscal year 1996. Respondent refused to refund the amount stating that petitioner's deadline for filing an amended SBT return for 1996 expired October 31, 2001, four years after the original deadline for filing the return. Petitioner requested an informal conference with respondent's Office of Legal and Hearings arguing that its amended SBT return was timely because petitioner's original SBT return filing deadline of October 31, 1997 had been extended to April 30, 1998 through petitioner's timely filing of a federal extension with the Internal Revenue Service. Following the conference, the hearing referee recommended that petitioner's refund request be denied because petitioner failed to file it within the applicable four-year statutory period. Respondent adopted the hearing referee's recommendation and again denied the request. Petitioner sought a re-determination of respondent's decision from the Tax Tribunal. Respondent moved for summary disposition arguing that the amended refund request was barred by the statute of limitation. The Tax Tribunal granted respondent summary disposition pursuant to MCR 2.116(C)(7) and dismissed the case as time-barred.

We review a decision on a motion for summary disposition de novo to determine whether the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition under MCR 2.116(C)(7) is proper when a claim is barred by a statute of limitation. *Id.* at 118 n 3. Issues of statutory interpretation are also subject to de novo review. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich

App 486, 491; 618 NW2d 917 (2000). However, we generally defer to the Tax Tribunal's interpretation of tax statutes. *Id.* MCL 208.80(1) provides that single business taxes shall be administered pursuant to MCL 205.1 *et seq.* *Trostel Ltd v Dep't of Treasury*, 269 Mich App 433, 440; 713 NW2d 279 (2006). MCL 205.30 requires that a claim for a refund of an overpayment be filed within the period of limitation specified in MCL 205.27a. MCL 205.27a(2) provides in pertinent part as follows:

(2) A deficiency, interest, or penalty shall not be assessed after the expiration of 4 years after the date set for the filing of the required return or after the date the return was filed, whichever is later. *The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return.* A person who has failed to file a return is liable for all taxes due for the entire period for which the person would be subject to the taxes.

The Tax Tribunal held that the four-year period of limitations for enforcing a claim of refund under MCL 205.27(2) applied to this action and, thus, petitioner's rights lapsed four years after petitioner's original SBT filing deadline. The deadline for filing an SBT annual return is set forth in MCL 208.73(1), which provides in pertinent part as follows:

An annual or final return shall be filed with the department in the form and content prescribed by the department by the last day of the fourth month after the end of the taxpayer's tax year. Any final liability shall be remitted with this return

The acknowledged due date for petitioner's 1996 fiscal year return was October 31, 1997. Petitioner filed its initial 1996 SBT return, together with a copy its federal extension request, on March 17, 1998. Thus, petitioner did not file its return by the original deadline. Citing MCL 208.73(3) and 208.73(4), the tribunal reasoned that petitioner could have filed a request for extension of time to file its Michigan SBT return. MCL 208.73(3) provides:

The commissioner *upon application of the taxpayer* and for good cause shown may extend the date for filing the annual return. Interest at the rate of 9% per annum shall be added to the amount of the tax unpaid for the period of the extension. The commissioner shall require a tentative return and payment of an estimated tax. [Emphasis added.]

As both the hearing referee and Tax Tribunal noted, petitioner did not file an application with the commissioner to extend its filing deadline under MCL 208.73(3). Although petitioner did not apply for an extension with the state, petitioner could have obtained an automatic extension of the deadline by complying with MCL 208.73(4):

If a taxpayer is granted an extension of time within which to file the federal income tax return for any taxable year, the filing of a copy of the request for extension together with a tentative return and payment of an estimated tax with the commissioner *by the due date provided in subsection (1)* shall automatically extend the due date for the filing of a final return under this act for an equivalent period plus 60 days. [Emphasis added.]

As noted by the Tax Tribunal, petitioner “filed neither a request for an extension, nor a tentative return” on or before the due date provided in MCL 208.73(1). Hence, petitioner failed to automatically extend the due date under MCL 208.73(4).

Nevertheless, petitioner cites the following passage from the *1997 Michigan Single Business Tax Instructions for Individuals, Partnerships and Fiduciaries*, published by respondent, as support for its assertion that it did not need to file for an extension:

Michigan will grant extensions for filing SBT returns, but will not extend the time to pay. To request a Michigan extension, file an *Application for Extension of Time to File Michigan Tax Returns*. **If you owe no tax**, you do not need to file an extension with Michigan by the due date of the return to avoid penalty and interest.

Filing a federal extension request with the Internal Revenue Service (IRS) does not automatically grant you a Michigan extension. The IRS does not notify state governments of extensions, so if you do not receive an approved extension, penalty and interest will accrue on tax due.

An extension of time to file is not an extension of time to pay. Extension applications received without proper payment ***will not be processed*** and penalty and interest will accrue on the unpaid tax from the original due date of the return. [Emphasis in original.]

Petitioner argues that these instructions set forth differing requirements for obtaining extensions for taxpayers who owe no taxes. Specifically, petitioner argues the instructions provide that a taxpayer who owes no tax need not file a formal extension. We disagree.

Aside from the fact that an instruction of general application not properly promulgated under the Administrative Procedures Act¹ is considered merely explanatory and not binding, *Danse Corp v Madison Heights*, 466 Mich 175, 181; 644 NW2d 721 (2002), and petitioner has presented no evidence that the instruction pamphlet was properly promulgated under the Administrative Procedures Act, we find that the quoted instruction does not support petitioner’s claim. The first sentence of the first paragraph speaks of two events: (1) an extension for filing SBT returns; and (2) an extension for paying SBT taxes, which will not be granted. The second sentence clearly indicates that to request an extension, the proper form needs to be filed. The third sentence indicates that taxpayers who do not owe will not be charged a penalty and interest if they do not file by the due date of their annual return. Nothing absolves taxpayers who do not owe from filing for an extension.

Further, the third paragraph does not mean the only extension applications that will be processed are those coming from taxpayers who owe tax. Rather, it simply indicates that applications of taxpayers who do owe tax will not be processed unless they are accompanied by

¹ MCL 24.201 *et seq.*

payment. Also, the second paragraph cited clearly states that a filed request for a federal extension “does not automatically grant [a taxpayer] . . . a Michigan extension.” Because petitioner failed to comply with the filing extension requirements of either MCL 208.73(3) or MCL 208.73(4), and has failed to cite authority to support a finding that it somehow obtained an extension in some other fashion, we conclude the Tax Tribunal did not err in finding that petitioner failed to obtain an extension of the deadline to file its Michigan SBT return. Because petitioner did not do so, the return was due October 31, 1997. Pursuant to MCL 205.27a(2), petitioner was required to file any amended claim for a refund within four years of that date. Because petitioner’s amended refund request was received by respondent May 2, 2002, it was untimely. MCL 205.27a(2).

Affirmed.

/s/ Michael J. Talbot

/s/ Donald S. Owens

/s/ Christopher M. Murray