STATE OF MICHIGAN

COURT OF APPEALS

DETROIT DIESEL CORPORATION, Petitioner-Appellee,	UNPUBLISHED June 14, 2011
v	No. 297376; 297377 Tax Tribunal
DEPARTMENT OF TREASURY, Respondent-Appellant.	LC No. 00-0319395; 00-319939

Before: MURRAY, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

In these consolidated appeals,[1] respondent Department of Treasury appeals by right the Tax Tribunal's orders granting petitioner Detroit Diesel Corporation's motion for summary disposition and reversing respondent's decision to deny petitioner's request for a tax refund for tax years 2001 and 2002. We affirm.

The sole issue on appeal is whether the Tax Tribunal properly determined that petitioner was entitled to a tax refund. Because fraud is not claimed, we review the Tax Tribunal's decisions for misapplication of the law or adoption of a wrong principle. *Briggs Tax Service, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010). Its factual findings are upheld unless they are not supported by competent, material, and substantial evidence on the whole record. *Id*. Also, we review de novo issues of statutory interpretation and decisions on motions for summary disposition. *Ford Motor Co v Dep't of Treasury*, 288 Mich App 491, 494; 794 NW2d 357 (2010). Summary disposition is proper when "[e]xcept as to damages there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

The basic facts of this case are undisputed. In 2001 and 2002, petitioner filed returns and paid taxes under the Motor Carrier Fuel Tax Act (MCFTA), MCL 207.211 *et seq*., when it

[1] *Detroit Diesel Corp v Dep't of Treasury*, unpublished order of the Court of Appeals, entered April 29, 2010 (Docket Nos. 297376, 297377).

should have filed returns under the Motor Fuel Tax Act (MFTA), MCL 207.1001 *et seq*.[2] Subsequently, petitioner filed amended returns seeking a refund under the MCFTA for fuel used for nontaxable purposes. Respondent denied the refund claims because they were filed outside the 18-month statute of limitations applicable to the MFTA. MCL 207.1048(1)(e).

"The primary goal of statutory interpretation is to give effect to the intent of the Legislature. The first step is to review the language of the statute. If the statutory language is unambiguous, the Legislature is presumed to have intended the meaning expressed in the statute." *Briggs Tax Service*, 485 Mich at 76. The MFTA provides, "[i]f a person pays the tax imposed by this act and uses the motor fuel for a nontaxable purpose as described in sections 33 to 47, the person may seek a refund of the tax." MCL 207.1032. Therefore, the statute's plain language specifies that a refund can be obtained only in relation to taxes paid under the act. Because petitioner did not pay taxes under the MFTA, it could not have sought a refund under the act.

In regard to the MCFTA, the tax is administered by the Revenue Act, MCL 205.1 *et seq*. MCL 207.216a(1). MCL 205.30(2) provides: "A taxpayer who paid a tax that the taxpayer claims is not due may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a." Petitioner paid a tax it claimed was not due. Thus, under the plain language of the statute, it was entitled to petition respondent for a refund. There is no dispute that petitioner filed its amended returns within the four-year limitations period and respondent does not dispute the amount owed to petitioner. MCL 205.30(1) provides that respondent "shall" issue a refund for the overpayment of taxes. "Shall" is mandatory language. *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008). Therefore, the Tax Tribunal did not err in concluding that respondent was statutorily required to issue petitioner a refund[3] and granting summary disposition in petitioner's favor.[4]

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[2] Each act imposes a fuel tax. However, at times pertinent to this appeal, under the MFTA the entire tax was collected by the supplier, while under the MCFTA only a portion was collected by the supplier with the remainder due to respondent quarterly. MCL 207.212(1); MCL 207.214(3); MCL 207.1008. The acts were amended effective April 1, 2003, so that taxpayers under both acts paid the same tax rate at the same time. 2002 PA 667; 2002 PA 668.

[3] We reject respondent's argument that the wrongful-conduct rule should prevent petitioner from being granted a refund, *Orzel v Scott Drug Co*, 449 Mich 550, 558, 561; 537 NW2d 208 (1995), as petitioner's conduct was not sufficiently serious to warrant application of the rule. And, it is not even clear that the rule applies to this dispute since the statute has a positive command—without exception—to refund taxes that should not have been paid.

[4] Petitioner's request for sanctions contained in its brief on appeal is not properly before the Court. See MCR 7.211(C)(8).

Affirmed.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens