



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Jeffrey W Thompson,
Petitioner,

MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

v

MOAHR Docket No. 18-003916

City of Milan,
Respondent.

Presiding Judge
David B Marmon

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment (“POJ”) on May 21, 2019. The POJ states, in pertinent part, “[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available**, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).”

On May 28, 2019, Respondent filed exceptions to the POJ. In the exceptions, Respondent states that Petitioner failed to meet his burden of proof that he was not disqualified from the exemption under MCL 211.7cc(3)(d). Specifically, although he filed a 2018 Michigan income tax return indicating he was a Michigan resident, it was also undisputed that he lived in Maine during the tax year. Further, his Michigan tax return indicates that he filed a return in Maine. The statute requires Petitioner to not file the Maine return as a Maine resident, and since Petitioner failed to prove that fact, and because the exemption is strictly construed in favor of the taxing unit, Respondent contends it must prevail.

On June 9, 2019, Petitioner filed a response to Respondent’s exceptions. In the response, Petitioner states in pertinent part that Petitioner filed the portions of his tax return necessary to prove he did not violate MCL 211.7cc(3), that Respondent failed to address the completeness of Petitioner’s evidence at hearing, that the return was properly signed and electronically submitted by Petitioner’s accountant, that Petitioner’s 2018 Maine return states he is a non-resident. Petitioner contends that Respondent now calls into question a fact that cannot be proven based upon the evidence on the record, and further, that the time for filing documents in this case has passed.

The Tribunal has considered the exceptions, response, and the case file and finds that the Administrative Law Judge properly considered the testimony and evidence submitted in rendering the POJ. More specifically, Petitioner’s 2018 Michigan tax return comports to the requirements of MCL 211.7cc(3)(c). An authorized representative may

have authority to sign a taxpayer's Michigan income tax return,¹ and the Tribunal is convinced that the return at issue is proper. Although Petitioner bears the burden to prove that the return submitted as evidence is true and valid, the Tribunal finds that the ALJ properly found that the burden was met in this case.

Further, the Tribunal finds that it cannot at this time consider Respondent's argument that Petitioner failed to prove his Michigan residency by failing to provide his 2018 Maine tax return. Specifically, this proceeding was subject to the rules set forth in the Tribunal's January 25, 2019 Notice of Telephonic Hearing, which indicates that parties must submit all documents in support of their contentions at least 21 days prior to the date of the hearing. It is undisputed that there is insufficient evidence upon the record to make such a finding under MCL 211.7cc(3)(d). In Small Claims cases, discovery is by leave of the Tribunal only.² Allowing additional discovery or requiring the parties to submit additional documentation at this phase of the case would not be appropriate, as it would directly violate the Notice of Telephonic Hearing. At the hearing, Respondent argued that most of Petitioner's income was attributable to Maine, but relying upon this assertion to determine residency would require the Tribunal to place an extra requirement upon the plain language of MCL 211.7cc(3), which it declines to do. Although Petitioner and his spouse earned income in Maine, the income is attributable to Michigan because they filed as Michigan residents and are therefore subject to Michigan income tax upon their out-of-state earnings. Further, Petitioner provided his Michigan driver's license and other documentation, which the Tribunal finds to be superior evidence as to the question of Petitioner's state of residence.

Finally, Respondent contends that Petitioner failed to provide the document to prove that he is not disqualified under MCL 211.7cc(3)(d), and as a result, that he failed to meet his strict burden of proof. The Tribunal finds that such a reading of the burden of proof requirements is too strictly construed. For example, Petitioner also failed to provide his Form 2368 proving that he claimed the subject property exemption as required by MCL 211.7cc(2), but there is no standard requiring that a party prove every element of his claim, only those reasonably in dispute. In deference to Respondent's position, the Tribunal notes that Petitioner's residency was reasonably in dispute in this case. Although the Tribunal believes a copy of the Maine tax return might have more easily resolved this dispute, based upon the Michigan tax return and other evidence on the record, it finds that Petitioner's failure to file his document does not cause him to fail his burden. Respondent's contention that Petitioner might have filed his Maine tax return as a Maine resident was reasonably based upon its belief that Petitioner was not a Michigan resident, but as Petitioner met his burden to prove his Michigan residency, the Tribunal finds that Respondent's exceptions relating to MCL 211.7cc(3)(d) are not properly pending.

¹ See Michigan Department of Treasury Form 151.

² See TTR 261.

Given the above, Respondent has failed to show good cause to justify modifying the POJ or granting a rehearing.³ As such, the Tribunal adopts the POJ as the Tribunal's final decision in this case.⁴ The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment.

1. As a result, Parcel No. 53-037-024-00 is entitled to a Principal Residence Exemption under MCL 211.7cc of 100% for the 2018 tax year.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's Principal Residence Exemption for the tax year(s) at issue as provided in this Final Opinion and Judgment within 20 days of entry of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall be without interest, as provided by MCL 211.7cc. It shall, however, include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.⁵ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.⁶ A copy of the motion must be served on the opposing party by mail or personal service or by email if

³ See MCL 205.762.

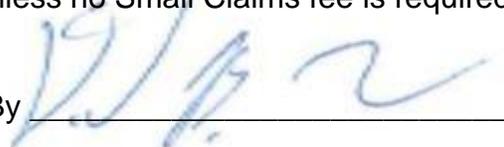
⁴ See MCL 205.726.

⁵ See TTR 261 and 257.

⁶ See TTR 217 and 267.

the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.⁷ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁸

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal by right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”⁹ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.¹⁰ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹¹

By  _____

Entered: June 24, 2019

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⁷ See TTR 261 and 225.

⁸ See TTR 261 and 257.

⁹ See MCL 205.753 and MCR 7.204.

¹⁰ See TTR 213.

¹¹ See TTR 217 and 267.