

STATE OF MICHIGAN
COURT OF CLAIMS

DHL EXPRESS (USA), INC.,

Plaintiff,

v

DEPARTMENT OF TREASURY, and THE
REVENUE DIVISION OF THE MICHIGAN
DEPARTMENT OF TREASURY,

Defendants.

OPINION AND ORDER

Case No. 17-000152-MT

Hon. Colleen A. O'Brien

Pending before the Court is defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). Because plaintiff's amended 2010 Michigan Business Tax (MBT) return was filed outside the four-year limitations period for claiming a credit, the motion is GRANTED.

At issue in this case is plaintiff's December 2015 refund request in an amended Michigan Business Tax (MBT) return for the 2010 tax year. Plaintiff originally filed its 2010 MBT return on December 16, 2011. On or about December 14, 2015, plaintiff submitted an amended 2010 MBT return to Treasury and claimed a \$1,862,435 overpayment of its 2010 MBT liability. Plaintiff sought a refund in this amount—\$1,862,435—from Treasury.

Treasury denied the refund claim because it was made outside the four-year limitations period for claiming refunds. On May 31, 2017, plaintiff filed its complaint in the instant action. Plaintiff contends that the statute of limitations does not bar the amended return and that plaintiff is entitled to the \$1,862,435 refund claimed on the amended 2010 MBT return.

Defendants move this Court for summary disposition under MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

The primary issue in this case is whether plaintiff's claim for a refund was made outside of the limitations period for claiming refunds. MCL 205.27a(2) provides that a "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." The "date set for the filing of the original return" is established by MCL 208.1505(1),¹ which provides that: "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." In this case, the "date set for the filing" of plaintiff's original 2010 MBT return was the last day of the fourth month after the end of the taxpayer's tax year, i.e., April 30, 2010. Plaintiff filed its amended 2010 MBT return on or about December 14, 2015. Recognizing that its amended return is outside of the four-year period for claiming a refund if the April 30, 2010 deadline applies, plaintiff contends that the date set for the filing of its original 2010 MBT return was extended by way of the extensions available to taxpayer set forth in MCL 208.1505(3) and/or (4).

¹ MCL 208.1505, like the rest of the MBT, was repealed and replaced by 2011 PA 39 in favor of the Corporate Income Tax Act, see MCL 206.601 *et seq.*

Plaintiff's arguments in this case require an examination of MCL 208.1505(3) and (4). A court's primary goal when construing a statute is to ascertain the intent of the Legislature as that intent can be discerned from the plain language of the statute. *Lee v Smith*, 310 Mich App 507, 509; 871 NW2d 873 (2015). The Court is to "read the statutory language in context and as a whole, considering the plain and ordinary meaning of every word." *Hamed v Wayne Co*, 490 Mich 1, 8; 803 NW2d 237 (2011). In addition, "[a] court must give effect to every word, phrase, and clause, and avoid an interpretation that renders any part of a statute nugatory or surplusage." *Lee*, 310 Mich App at 509.

The first statutory option for obtaining an extension, MCL 208.1505(3) provides that Treasury, "*upon application of the taxpayer and for good cause shown, may* extend the date for filing the annual return." (Emphasis added). The plain language of MCL 208.1505(3) reveals two requirements for obtaining an extension under this subsection: (1) a taxpayer must make an application to Treasury for an extension; and (2) the application must demonstrate good cause. Upon a taxpayer satisfying these requirements, Treasury "may" grant an extension for the filing of the return. See *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008) (explaining that the term "may" typically denotes permissive, rather than mandatory action). In this case, plaintiff plainly did not satisfy this subsection because it never applied for an extension, let alone attempted to establish good cause. Hence, MCL 208.1505(3) provides no support to plaintiff's cause.

The second option for obtaining an extension is set forth in MCL 208.1505(4) and is predicated on obtaining an extension of time within which to file the taxpayer's federal income tax return. To that end, MCL 208.1505(4) provides, in pertinent part:

If a taxpayer is granted an extension of time within which to file the federal income tax return for any tax year, the filing of a copy of the request for extension together with a tentative return and payment of an estimated tax with the department by the due date provided in subsection (1) shall automatically extend the due date for the filing of an annual or final return under this act until the last day of the eighth month following the original due date of the return.

Unlike the discretionary extension available under subsection (3), a taxpayer's fulfillment of the requirements of subsection (4) "*shall automatically extend*" the due date for the filing of a return. See *Walters*, 481 Mich at 383 (the use of the term "shall" in a statute typically denotes mandatory action). However, in order to be entitled to this "automatic" extension, the statute requires: (1) the existence of an extension of time within which to file a federal income tax return; (2) "the filing of a copy of the request for extension"; and (3) the filing of a tentative return and payment of estimated tax. MCL 208.1505(4). These materials must be filed with Treasury "by the due date provided" for the filing of the original tax return. *Id.*

In this case, plaintiff obtained an extension for filing its 2010 federal return; however, there are multiple problems with plaintiff's attempt to rely on MCL 208.1505(4), one of which plaintiff does little to address. In particular, the plain language of the statute requires the filing of a request with Treasury "by the due date provided in subsection (1)." Plaintiff suggests that merely obtaining a federal extension, while making its required quarterly payments under the MBT, was enough to obtain an extension from Treasury, without taking any additional steps. However, the "automatic" extension available under MCL 208.1505(4) is not so automatic that a taxpayer need not submit any documentation to Treasury. This Court is not permitted to read subsection (4) in the manner suggested by plaintiff, because doing so would render the obligations placed on the taxpayer largely superfluous. See *Lee*, 310 Mich App at 509. Adopting plaintiff's position would permit a taxpayer to obtain a federal extension, and, by virtue of this act—which could be unknown to Treasury—obtain an extension of the deadline for

filing its MBT return. In essence, plaintiff's position would put the onus on Treasury to uncover whether the taxpayer is eligible for an extension for filing its annual MBT return. The plain language of the statute does not permit a taxpayer to obtain a federal extension and hope that Treasury will discover the same.

This conclusion is buttressed by the instructions and forms promulgated by Treasury with respect to extensions. See MCL 208.1513(3) (authorizing Treasury to prescribe forms). Here, "Form 4" and its related instructions plainly require a submission to Treasury by a taxpayer before an extension is granted under MCL 208.1505(4). At the bottom of the instructions is a form that is to be mailed to Treasury when a taxpayer requests an extension of time for filing a return. The form asks the taxpayer to check a box indicating the subsection of MCL 208.1505 on which the taxpayer is relying to requesting an extension. The instructions with the form expressly indicate that, as to "Michigan Business Tax filers," such filers "*must use this form to request an extension and must file it even if the Internal Revenue Service has approved a federal extension.*" (Emphasis added).

Form 4 plainly contemplates that a taxpayer must make a submission to Treasury in order to obtain an extension under MCL 208.1505(4). Courts give "respectful consideration" to a state agency's interpretive guidance of a statute with which the agency is charged with interpreting, and "do not generally overrule such an interpretation absent cogent reasons." *D'Agostini Land Co LLC v Dep't of Treasury*, __ Mich App __, __; __ NW2d __ (2018) (Docket No. 336599), slip op at 6. Here, where Treasury's interpretive guidance tracks the pertinent statutory language, there is no "cogent reason" to reach a contrary conclusion regarding MCL 208.1505(4)'s requirements. Accordingly, plaintiff's failure to submit a formal request for an extension is fatal to its claim that it obtained an extension under MCL 208.1505(4).

In urging this Court to find that it satisfied the requirements of MCL 208.1505(4), plaintiff does not contend that it submitted a request for an extension; instead, plaintiff suggests that it submitted to Treasury some of the documentation that must accompany a request MCL 208.1505(4), and that any missing documentation was excused. For instance, plaintiff seeks to excuse its failure to submit a copy of its federal extension. In doing so, plaintiff selectively relies on portions of Form 4 and the instructions articulated therein regarding applications for extensions. At best, the instructions on Form 4 indicate that Treasury will permit a taxpayer to certify—and to produce a copy of the same upon demand—that the taxpayer has obtained a federal income tax extension, rather than producing the federal extension itself. However, this does little to help plaintiff's position because Form 4 plainly instructs—as does MCL 208.1505(4)—that a taxpayer must make a request for an extension.

Likewise, plaintiff's contentions that it filed a tentative return and estimated payments in satisfaction of MCL 208.1505(4)'s requirements are meritless. Plaintiff relies on its submission of estimated quarterly payments required of MBT taxpayers under MCL 208.1501(1), and claims that the estimated quarterly payments satisfy the requirement of making "payment of an estimated tax" under MCL 208.1505(4). Plaintiff's argument is contrary to the plain language of the MBT. In particular, MCL 208.1505(4) provides that, in order to obtain an automatic extension, the taxpayer must file "a tentative return and payment of an estimated tax[.]" This provision, which provides an extension for the filing of an "annual or final return," see MCL 208.1505(1), plainly refers to an estimated tentative *annual* return and payment of an estimated *annual* tax, see *Hudsonville Creamery & Ice Cream Co, LLC v Dep't of Treasury*, 314 Mich App 726, 733; 887 NW2d 641 (2016) (providing that statutes must be read in context). In other words, a taxpayer must, in order to obtain an extension on its annual return, file an estimated

annual return and an estimate of its annual tax liability. There is no provision within the plain language of MCL 208.1505(4) that provides an exception to this annual, estimated return requirement for taxpayers who made estimated quarterly payments. Accordingly, plaintiff's attempt to substitute quarterly payments for an estimated annual return does not find support in the plain language of the MBT.

Finally, as an alternative to its contentions that it satisfied the statutory requirements for obtaining an extension on its 2010 MBT return, plaintiff argues that Treasury should be estopped from disputing whether plaintiff's original return was timely filed. Plaintiff filed its original 2010 MBT return on December 15, 2011. Recognizing that the return was due on April 30, 2011, plaintiff argues that if Treasury considered the December 15, 2011 return untimely, it was required to subject plaintiff to a mandatory penalty for filing a late return. Treasury did not, however, impose a late-filing penalty. According to plaintiff, the only conclusion that can be drawn from Treasury's failure to impose a mandatory late-filing penalty on plaintiff's December 15, 2011 return is that Treasury considered plaintiff's return to be within the eight-month extension afforded by MCL 208.1505(4), which would have extended the time for filing the return until December 31, 2011. Plaintiff argues that Treasury's failure to impose a late-filing penalty induced plaintiff to believe that its December 15, 2011 return was timely filed. Plaintiff argues that it relied on this belief, and that Treasury should be equitably estopped from asserting that the December 15, 2011 return was untimely.

In support of its estoppel argument, plaintiff cites MCL 205.24. Subsection (1) of the statute provides that if "a taxpayer fails or refuses to file a return or pay a tax administered under this act within the time specified, *the department, as soon as possible, shall assess* the tax against the taxpayer and notify the taxpayer of the amount of the tax." MCL 205.24(1) (emphasis

added). In addition, subsection (2) provides that penalties—which increase based on the length of the delay in filing the return—“shall be added,” as well as interest. MCL 205.24(2).

“Equitable estoppel arises where a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, the other party justifiably relies and acts on that belief, and the other party will be prejudiced if the first party is allowed to deny the existence of those facts.” *Sau-Tuk Indus, Inc v Allegan Co*, 316 Mich App 122, 146; 892 NW2d 33 (2016) (citation and quotation marks omitted). When a party seeks to invoke the doctrine of equitable estoppel—particularly when the party seeks to invoke the doctrine against a governmental entity—caselaw presumes that the party is aware of pertinent statutes. *Id.*

Plaintiff’s position is meritless because it relies on incorrect assumptions of law. At the outset, plaintiff’s position fails because it is charged with knowledge of MCL 208.1505, which provides two methods—see MCL 208.1505(3)-(4), discussed above—to obtain an extension of time to file a tax return. See *Sau-Tuk Indus, Inc*, 316 Mich App at 146. Plaintiff plainly did not follow those methods for obtaining an extension, thereby rendering dubious the assertion that any action taken by Treasury could have led plaintiff to believe that it obtained an extension of time in which to file its 2010 MBT return. Moreover, plaintiff’s assertion that Treasury was unequivocally required to impose penalties for the late-filed return is incorrect. In this respect, MCL 205.24(2), the very provision that purportedly makes the imposition of such penalties mandatory, gives Treasury the authority to promulgate a rule regarding when the “waiver of the penalty” is appropriate. See also Mich Admin Code, R 205.1013 (delineating a non-exhaustive list of circumstances for Treasury to consider in weighing whether to waive the imposition of a penalty). In addition, MCL 205.24(4) authorizes Treasury, in certain circumstances, to “waive the penalty prescribed in subsection (2).” Furthermore, MCL 205.28(1)(e) outlines Treasury’s

authority to compromise a taxpayer's liability in certain circumstances, and makes clear that the section "does not prevent a compromise of interest or penalties, or both." Hence, Treasury has authority, in its discretion, to waive the "mandatory"² penalty and interest provisions cited by plaintiff. The significance of Treasury's authority, at least as it pertains to plaintiff's argument in the instant case, is that it undermines any argument that plaintiff relied on the lack of penalties in order to conclude that Treasury considered plaintiff's late-filed 2010 MBT return to be timely. There can be no assertion of an action by Treasury that induced plaintiff to believe its 2010 MBT return was timely, or that plaintiff could justifiably rely on the same. Indeed, plaintiff is charged with the knowledge that Treasury could, in its discretion, waive the imposition of penalties and interest. See *Sau-Tuk Indus*, 316 Mich App at 146.

In conclusion, there is no merit to plaintiff's contentions in this case. Plaintiff's 2010 MBT return was due by April 30, 2011. Plaintiff failed to file its return by this time, and plaintiff did not obtain—or request—an extension in which to file its MBT return. Nor is there any merit to plaintiff's estoppel argument. Moreover, plaintiff had, in accordance with the dictates of MCL 205.27a(2), four years from the due date for filing its original return in which to request a refund. This four-year period expired on April 30, 2015. Plaintiff's December 2015

² Plaintiff does not argue that Treasury's authority under the provisions highlighted above conflicts with the directive that penalties and interest "shall" be added to the taxpayer's liability. In fact, plaintiff has not even acknowledged any of the discretion afforded to Treasury under the provisions noted above. Nevertheless, any argument that the statutes conflicted with one another would be meritless. When statutes relate to the same subject matter, a reviewing court has a duty to construe the statutes in a manner that avoids a conflict between the statutes, if possible. See *Walters v Leech*, 279 Mich App 707, 710; 761 NW2d 143 (2008). Here, any purported conflict could be resolved by interpreting the statutes noted above by concluding that, in general, Treasury is required to add penalties and interest in the event of a late-filed return; however, Treasury has discretion to waive such penalties and interest.

amended return was outside of this four-year period. With no cognizable extension of time, plaintiff's amended return was untimely. Consequently, Treasury appropriately denied plaintiff's untimely claim for a refund, and summary disposition in favor of defendants is warranted.

IT IS HEREBY ORDERED that defendants' motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(10).

This order resolves the last pending claim and closes the case.

Dated: May 22, 2018


Colleen A. O'Brien, Judge
Court of Claims