STATE OF MICHIGAN

COURT OF CLAIMS

TRUGREEN LIMITED PARTNERSHIP v DEPARTMENT OF TREASURY

Case No. **17-000141-MT** **Hon. Michael J. Talbot**

ORDER

At a session of said Court held,
Detroit, Wayne, Michigan, on
April 24, 2018.

Plaintiff having filed a motion for summary disposition pursuant to MCR 2.116(C)(10) and defendant having moved for summary disposition under MCR 2.116(I)(2);

IT IS HEREBY ORDERED that plaintiff's motion is DENIED and summary disposition is GRANTED in favor of defendant under MCR 2.116(I)(2).

This is a final order that resolves the last pending claim and closes the case.

Michael J. Talbot, Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Clerk, on

April 24, 2018
Date

Clerk

STATE OF MICHIGAN

COURT OF CLAIMS

TRUGREEN LIMITED PARTNERSHIP,

Plaintiff,

v

Case No. 17-000141-MT

DEPARTMENT OF TREASURY,

Hon. Michael J. Talbot

Defendant.

OPINION

Pending before the Court is a summary disposition motion filed by plaintiff, TruGreen Limited Partnership (TruGreen), pursuant to MCR 2.116(C)(10). Defendant, Department of Treasury (the Department), also seeks summary disposition under MCR 2.116(I)(2). The underlying dispute in this case concerns an assessment of tax under the Use Tax Act (UTA), MCL 205.91, *et seq*. At issue is whether the exemption set forth in MCL 205.94(1)(f), which provides a use tax exemption for property used in connection with certain agricultural and horticultural activities, requires those activities be connected to the production of an agricultural or horticultural product for ultimate sale. TruGreen argues that under the plain language of the statute, the exemption is not limited to property used in activities that contribute to the production of an agricultural or horticultural product and that mere use or consumption of the property "in the tilling, planting, caring for and/or harvesting of the things of the soil" is all that is required under MCL 205.94(1)(f). The Department disagrees, maintaining that application of existing case law, as well as a careful consideration of the words and context of the exemption,

should lead to the conclusion that the statute applies only to taxpayers that contribute to the production of an agricultural or horticultural product for ultimate sale. For the reasons set forth herein, the Court grants summary disposition in the Department's favor pursuant to MCR 2.116(I)(2).

I. FACTUAL AND PROCEDURAL BACKGROUND

The parties have entered into a joint stipulation of facts and trial exhibits. "Where parties agree to submit a case on stipulated facts, courts generally accept those facts as conclusive."[1] In addition, courts have discretion to permit or consider additional, noncontradictory proofs supplementing the parties' stipulation.[2] The following are the stipulated and relevant uncontradicted facts.

TruGreen is a Delaware partnership with its headquarters located in Memphis, Tennessee. During the tax periods at issue (January 1, 2012, through August 31, 2016), TruGreen was a lawn care company that provided turf grass, tree, and shrub care services to both residential and commercial customers in Michigan and throughout the United States. Its services included lawn, tree, and shrub fertilization, weed and pest control, as well as the application of soil amendments such as lime, sulfur, gypsum and iron. During the tax periods at issue, TruGreen paid use tax on tangible personal property it used for these services, such as fertilizer and seed. However, the parties do not dispute that in the course of TruGreen's business

[1] *Kaiser Optical Systems, Inc v Dep't of Treasury*, 254 Mich App 517, 520; 657 NW2d 813 (2002).

[2] *Signature Villas, LLC v Ann Arbor*, 269 Mich App 694, 706; 714 NW2d 392 (2006).

activities, it did not produce or contribute to the production of agricultural or horticultural products for ultimate sale to customers.

In 2015, TruGreen filed a use tax refund claim for the tax period of January 1, 2012, through January 31, 2012, alleging that use tax was improperly paid on chemicals and applicators used to care for customers' grasses, shrubs, and trees. After the Department denied the refund claim, TruGreen requested an informal conference. The hearing referee determined that TruGreen was qualified for an agricultural use tax exemption under MCL 205.94(1)(f) for the January 2012 tax period. However, the Department rejected the referee's recommendation and denied TruGreen's refund claim, reasoning that TruGreen's use of fertilizer and seed fell outside the definition of agricultural production. TruGreen later filed a second refund claim, extending the relevant tax period to January 1, 2012, through August 31, 2016, which was also denied by the Department. TruGreen subsequently filed a complaint in this Court, demanding a refund of $1,160,201.49, plus statutory interest and costs, for the tax period January 1, 2012, to August 31, 2016.

TruGreen now moves for summary disposition under MCR 2.116(C)(10), arguing that the plain language of MCL 205.94(1)(f) is unambiguous and must be interpreted and enforced as written. The parties have stipulated that grasses, shrubs, and trees constitute "things of the soil" within the meaning of the statute. Thus, according to TruGreen, it meets the unambiguous requirements of the statute because it is "a business enterprise" that uses and consumes property "in the tilling, planting, caring for, and/or harvesting of the things of the soil."

TruGreen maintains that agricultural or horticultural production is not a requirement under the statute, nor do a taxpayer's activities need to contribute to a product for ultimate sale.

TruGreen relies on *William Mueller & Sons, Inc v Dep't of Treasury*[3] for the proposition that the statute "does not require that the taxpayer be engaged in the actual production of horticultural or agricultural products." TruGreen also directs the Court's attention to *Mich Milk Producers, Ass'n v Dep't of Treasury*,[4] which rejected the notion that the taxpayer must be "an agricultural producer" to qualify for the exemption. In addition, TruGreen contends that the 2004 amendments to the statute removed reference to the requirement of agricultural production. Lastly, TruGreen argues that Mich Admin Code, R 205.51, is in conflict with the plain language of MCL 205.94(1)(f) and, therefore, is unlawful and void.

In response, the Department argues that TruGreen's application of relevant caselaw is misplaced, as courts have consistently held that under the plain language of MCL 205.94(1)(f), qualifying property used in "the tilling, planting, caring for, or harvesting of the things of the soil" must contribute to agricultural or horticultural production. According to the Department, *Mueller* stands for the proposition that the statute does not require that the *taxpayer* be engaged in the actual production of horticultural or agricultural products. Nonetheless, under *Mich Milk Producers*, use or consumption of the property must contribute to horticultural or agricultural production of a product for ultimate sale. Because Plaintiff merely provides lawn care services that have no relationship to horticultural or agricultural production, it does not qualify for the exemption.

[3] *William Mueller & Sons, Inc v Dep't of Treasury*, 189 Mich App 570, 574; 473 NW2d 783 (1991).

[4] *Mich Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486; 618 NW2d 917 (2000).

The Department also contends that the 2004 amendments served to standardize the administration and collection of sales and use tax in accordance with a multistate agreement entered into under the streamlined sale tax project. The Department argues that the the amendments were not intended to, and did not, eliminate the substantive requirement of agricultural or horticultural production under MCL 205.94(1)(f), but merely removed a reporting requirement in line with the rest of the amendments under 2004 PA 172 and 2004 PA 173. The Department also disputes that Rule 205.51 conflicts with MCL 205.94(1)(f) and urges this Court to conclude that the Rule must be given effect.

II. STANDARD OF REVIEW

"Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law."[5] A court ruling on a motion under MCR 2.116(C)(10) must consider the "pleadings, affidavits, depositions, admissions, and other admissible evidence submitted by the parties in the light most favorable to the nonmoving party."[6] When the nonmoving party has the ultimate burden of proof at trial, the moving party can satisfy its burden of production under MCR 2.116(C)(10) by "submit[ting] affirmative evidence that negates an essential element of the nonmoving party's claim, or by demonstrat[ing] to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim."[7] If the nonmoving party fails to produce evidence sufficient to demonstrate an essential element of its

[5] *Dancey v Travelers Prop Cas Co of America*, 288 Mich App 1, 7; 792 NW2d 372 (2010).

[6] *Robins v Garg (On Remand)*, 276 Mich App 351, 361; 741 NW2d 49 (2007).

[7] *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 7; 890 NW2d 344 (2016) (quotation marks and citation omitted; alterations in original).

claim, the moving party is entitled to summary disposition.[8] On the other hand, "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."[9]

III. DISCUSSION

A. HISTORICAL DEVELOPMENT OF THE USE TAX ACT EXEMPTION FOR AGRICULTURAL PRODUCTION

In 1933, the General Sales Tax Act was enacted, placing a 3% sales tax on the retail sales of tangible personal property.[10] The term "sale at retail" was defined, in pertinent part as,

> [A]ny transaction by which is transferred for consideration the ownership of tangible personal property, when such transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use or for any other purpose than for resale in the form of tangible personal property.[11]

As originally enacted, the tax applied to the sale of all goods intended for "use or consumption," regardless of who used them, and an exemption was only provided for tangible personal property purchased for resale. As a result, an organized group of farmers and manufacturers immediately called for legislative action to address what was viewed as the disastrous "pyramiding" effect of taxing the inputs of a product that would be ultimately sold at retail.[12] Shortly after enacting the

---

[8] *Id*. at 9.

[9] MCR 2.116(I)(2).

[10] MCL 205.52(1), as enacted by 1933 PA 167.

[11] MCL 205.51(b.1), as enacted by 1933 PA 167.

[12] See Milton, *Toward Rationality in a Retail Sales Tax*, 5 Nat'l Tax J 79, 79-85 (1952). See also *Elias Bros Restaurants, Inc v Dep't of Treasury*, 452 Mich 144, 152; 549 NW2d 837 (1996) (explaining that the industrial processing exemption, which was developed with the agricultural production exemption, was "the product of a targeted legislative effort to avoid double taxation of the end product offered for retail sale or, in other terms, to avoid pyramiding the use and sales

General Sales Tax Act, the Legislature passed a resolution to clarify that the intent of the statute was to exclude certain purchases, including those related to manufacturing or agricultural production. Specifically, the resolution provided, in pertinent part, as follows:

> Resolved that it was the intent of the Legislature that the State board of tax administration be empowered and authorized by said act to define and liberalize the definition of a sale at retail; and . . .
>
> *Resolved, that the legislative intent, in passing Act No. 167, Pub. Acts 1933, was to exclude from the provisions of the act any sale of anything used exclusively in the manufacturing, assembling, producing, preparing, or wrapping, crating, and/or otherwise preparing for delivery any tangible personal property to be sold*; and be it further
>
> Resolved, that *the word "producing" as used herein shall include agricultural production.*[13]

The sales tax exemptions for agricultural production and industrial processing were later codified in 1935.[14]

When the UTA was enacted in 1937, it likewise provided a use tax exemption for "[p]roperty sold to a buyer for consumption or use in industrial processing or agricultural production."[15] By way of a 1949 amendment, the industrial processing and agricultural

---

tax. Pyramiding occurs when both use and sales taxes are imposed on the production and sale of retail goods.") (Quotation marks and citation omitted).

[13] Milton, *Toward Rationality in a Retail Sales Tax*, 5 Nat'l Tax J 79, 81-82 (1952), quoting HR Con Res 96 (1933)

[14] MCL 205.51(b.1), as amended by 1935 PA 77 ("The term 'sale at retail' means any transaction by which is transferred for consideration the ownership of tangible personal property, when such transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use *other than for consumption or use in industrial processing or agricultural producing*, or for any other purpose than for release in the form of tangible personal property.") (Emphasis added).

[15] MCL 205.94(g), as enacted by 1937 PA 94.

production exemptions were divided into separate subsections. As it pertains to the later exemption, the amended statute exempted the following from use tax:

> (f) Property sold to persons engaged in or having an interest in, as a business enterprise and using and consuming such property in the tilling, planting, caring for and/or harvesting of the things of the soil, in the breeding, raising or caring for livestock and/or poultry or horticultural products, including transfers of livestock and/or poultry or horticultural products for further growth: *Provided, That in all such cases, at the time of the transfer of the tangible personal property, the transferee shall sign a statement, in a form approved by the department of revenue, stating that such property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise. Such statement shall be accepted by all courts as prima facie evidence of the exemption . . . .*[16]

In addition to providing more specificity to the agricultural production exemption, the 1949 amendment addressed growing concerns that proper sales and use tax was not being remitted to the state and that enforcement measures, including the tightening of reporting requirements, needed to be put in place.[17] Thus, a taxpayer claiming an agricultural exemption was for the first time required to sign a statement concerning the exempt use of the property.[18]

Except for minor revisions, the agricultural production exemption remained essentially unchanged until 2004, when the Legislature passed a package of tie-barred bills that authorized the state's participation in the multistate streamlined sales tax project. The purpose of the bills was to set forth "a means of reducing the burden of collecting [sales and use] taxes on sellers, thereby increasing compliance with the taxes."[19] The enactment of the Streamlined Sales and

---

[16] MCL 205.94(f), as amended by 1949 PA 273 (emphasis added).

[17] See Baird, *Bills Would Tighten Sales Tax Collection*, Lansing State Journal (April 23, 1949), pp 1-2.

[18] See MCL 205.94(f), as amended by 1949 PA 273.

[19] House Legislative Analysis, HB 5502-5505 (March 23, 2004).

Use Tax Administration Act[20] and the Streamlined Sales and Use Tax Revenue Equalization Act[21] in 2004 included amendments to the UTA and General Sales Tax Act "to make complementary changes in those acts."[22] Relevant to this case is the deletion of the second and third sentences of former MCL 205.94(1)(f)—i.e., the sentences requiring the taxpayer to sign a form certifying the exempt use of the tangible personal property and directing courts to accept such statement as prima facie evidence of the exemption.[23] In place of this requirement, the 2004 amendments shifted the onus to the seller to obtain identifying information from the purchaser and identify the purchaser's basis for entitlement to the exemption.[24] As it currently exists, MCL 205.94(1)(f) exempts the following property from use tax:

> Property sold to a person engaged in a business enterprise and using and consuming the property in the tilling, planting, draining, caring for, or harvesting of the things of the soil, in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth, or in the direct gathering of fish, by net, by line, or otherwise only by an owner-operator of the business enterprise, not including a charter fishing business enterprise.[25]

---

[20] MCL 205.801 *et seq*.

[21] MCL 205.171 *et seq*.

[22] House Legislative Analysis, HB 5502-5505 (March 23, 2004). See also 2004 PA 172 and 2004 PA 173.

[23] Compare MCL 205.94(f), as amended by 1949 PA 273, and MCL 205.94(1)(f), as amended by 2004 PA 172.

[24] See MCL 205.104b(1), as added by 2004 PA 172.

[25] MCL 205.94(1)(f) goes on to clarify certain types of property that are and are not included within the scope of the exemption, but the balance of the subsection is not relevant to the issue at hand.

B. THE CURRENT AGRICULTURAL PRODUCTION EXEMPTION

With the foregoing historical development in mind, the Court turns to application of the agricultural production exemption to the facts at hand. Interpreting a former version of the exemption, the Court of Appeals in *Mich Milk Producers*[26] explained that the exemption has two basic requirements:

> First, the subject property must be sold to a person "engaged in a business enterprise." Second, the property *must be used or consumed for agricultural or horticultural production*. [Emphasis added.]

Admittedly, the statutory language in effect at the time *Mich Milk Producers* was decided included an explicit reference to "production of horticultural or agricultural products" in the context of the certification requirement. Such language is notably absent from the current version of the statute, which, in pertinent part, exempts "[p]roperty sold to a person engaged in a business enterprise and using and consuming the property in the tilling, planting, draining, caring for, or harvesting of the things of the soil . . . ."[27] Nonetheless, in *Mueller*,[28] the Court of Appeals considered the significance of the language that was later deleted. The defendant in *Mueller* argued that the second sentence—requiring a signed statement indicating "that the property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise"—should be read as limiting the exemption to business enterprises that were in the business of producing agricultural products.[29] The *Mueller* Court disagreed, concluding that the quoted language differentiated between production of such

---

[26] *Mich Milk Producers*, 242 Mich App at 493.

[27] MCL 205.94(1)(f).

[28] *Mueller*, 189 Mich App 570.

[29] *Id*. at 573-574.

products for commercial, rather than personal, use and the certification requirement related only to creation of prima facie evidence of the exemption, but "*does not create additional requirements for the application of the exemption*."[30] Thus, the requirement that the property at issue be used or consumed for agricultural production is not based upon the previous "production of horticultural or agricultural products" language. Accordingly, this Court remains bound by the Court of Appeals' interpretation of MCL 205.94(1)(f), despite the deletion of an explicit reference to "production of horticultural or agricultural products." In other words, this Court will not construe the removal of sentences containing reference to agricultural "production" as changing the substantive requirements for exemption eligibility.

Here, TruGreen's use of various chemicals, seeds, and applicators was not made in connection with agricultural or horticultural *production*, as required by the statute. TruGreen has not pointed to, nor is the Court aware of, any caselaw that would support its argument that a taxpayer can qualify for the exemption without the existence of, and contribution to, an agricultural or horticultural product for ultimate sale. Indeed, the only cases TruGreen relies upon that interpret and apply the agricultural production exemption support the conclusion that production of horticultural or agricultural products *is* necessary.[31]

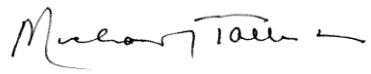
---

[30] *Id*. (emphasis added).

[31] See *Mueller*, 189 Mich App 570 (applying exemption where taxpayer applied fertilizer to property owned by farming customers from which agricultural products were produced); *Mich Milk Producers*, 242 Mich App 486 (applying exemption to equipment used in testing raw milk because the tests ensured the milk met legally mandated standards and was, therefore, "a direct component of the agricultural production process"); *Sietsema Farms Feeds, LLC v Dep't of Treasury*, 296 Mich App 232; 818 NW2d 489 (2012) (affirming denial of exemption for equipment used in production of chicken feed where the petitioner's business activities did not directly touch the agricultural production engaged in by its customers).

This result is further supported by the legislative history set forth earlier. The purpose of the agricultural production exemption, as discussed above, was to prevent the pyramiding of tax on a product for ultimate sale.[32] TruGreen's reading distorts the historical meaning of the statute, and attempts to turn it into something that the Legislature simply did not intend: a broad exemption for service providers that do not in any way contribute to the production of an agricultural or horticultural product for ultimate sale. Because TruGreen's use of the personal property at issue was not made in connection with agricultural or horticultural production, the Department correctly denied TruGreen's refund claim. Accordingly, the Department is entitled to judgment as a matter of law.[33]

Dated: April 24, 2018



Michael J. Talbot, Judge

[32] "The theoretical justification for exempting machinery, equipment, and other property purchased for use in production is the same as that for the sale-for-resale exemption and for the analogous exemptions and exclusions. . .—namely, to avoid pyramiding of the tax." Hellerstein & Hellerstein, State Taxation (3rd ed.), § 14.05. See also Milton, *Toward Rationality in a Retail Sales Tax*, 5 Nat'l Tax J 79, 80 (1952).

[33] MCR 2.116(I)(2).