

STATE OF MICHIGAN
COURT OF APPEALS

NATIONAL CENTER FOR MANUFACTURING
SCIENCES, INCORPORATED,

UNPUBLISHED
February 25, 1997

Plaintiff-Appellant,

v

No. 193438
Michigan Tax Tribunal
Docket No. 00231473

CITY OF ANN ARBOR,

Defendant-Appellee.

Before: MacKenzie, P.J., and Holbrook, Jr., and T.P. Pickard,* JJ.

PER CURIAM.

Plaintiff National Center for Manufacturing Sciences, Inc., appeals as of right from an order of the Michigan Tax Tribunal dismissing plaintiff's claim for a refund of property taxes paid in tax years 1989 through 1993. The tribunal dismissed plaintiff's claim for lack of jurisdiction. We affirm.

The plain language of both MCL 205.735(2); MSA 7.650(35)(2) and MCL 205.737(4); MSA 7.650(37)(4) indicates that the filing deadline for contesting assessments is June 30 of the tax year for which the assessment is in dispute. Moreover, because MCL 205.737(4); MSA 7.650(37)(4) expressly states that all claims relating to assessment determinations and for refunds may be joined, we reject plaintiff's contention that this section is inapplicable to a petition for a refund of an unlawful tax. To invoke the jurisdiction of the tax tribunal for refund of an invalidly assessed tax, the petitioner must comply strictly with the requirements of the statutory remedy:

Plaintiff urges that payments constitutionally void must be repaid irrespective of compliance with the statute of limitations. We disagree. The provision of the Federal Constitution prohibiting state taxation of imports is not self-executing. Plaintiff's failure to exercise the existing statutory remedy within the prescribed time limit does not deny the constitutional tax exemption on imports. It does, however, foreclose further assertion of the exemption in the courts. Even in the case of an illegal tax, failure to bring suit within 30 days after payment acts as a complete bar to recovery. *Norton*

* Circuit judge, sitting on the Court of Appeals by assignment.

Twp v Cockerill, 265 Mich 405; 251 NW 543 (1933); *Lingle v Elmwood Twp*, 142 Mich 194; 105 NW 604 (1905). [*Price Paper Corp v Detroit*, 42 Mich App 488, 491; 202 NW2d 523 (1972).]

See also *Szymanski v Westland*, 420 Mich 301; 362 NW2d 224 (1984); *Skybolt Partnership v Flint*, 205 Mich App 597; 517 NW2d 838 (1994). Accordingly, because there is no dispute that plaintiff failed to file either an original petition or an amended petition in a timely manner seeking a refund for tax years 1989 through 1993, the tribunal lacked jurisdiction to consider plaintiff's claim.

Plaintiff's claim to an exemption clearly comes within the definition of an assessment dispute. Therefore, plaintiff's argument that the instant controversy falls within the parameters of the third sentence of MCL 205.735(2); MSA 7.650(35)(2), governing "other matters" from which an appeal may be claimed within thirty days of the final decision, is without merit. Even if the provision referring to "other matters" was applicable, the tribunal has never addressed the legality of the assessments in the years 1989 through 1993. Therefore, there is no final decision with regard to the tax years at issue from which an appeal may be claimed. Plaintiff has cited no authority for the proposition that the city's refusal to issue a refund can confer jurisdiction on the tribunal in the absence of the timely filing of a petition or an amendment to a petition.

The tribunal correctly determined that it did not have jurisdiction under § 211.53a, which provides that a taxpayer may recover taxes paid in excess of the correct amount as the result of a mutual mistake or clerical error if suit is commenced within three years from the date of payment. Plaintiff's petition did not allege that it was seeking a refund because of a clerical error or mutual mistake, and it is apparent from the facts that no such mistake or error was involved.

In light of our holdings above, we need not address plaintiff's remaining arguments.

Affirmed. No costs, a public question involved.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Timothy P. Pickard