

STATE OF MICHIGAN
COURT OF APPEALS

DOC OPTICS, INC.,

Petitioner-Appellant,

v

CITY OF SOUTHFIELD,

Respondent-Appellee.

UNPUBLISHED

August 29, 1997

No. 196268

Michigan Tax Tribunal

LC No. 00226398

Before: Smolenski, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Petitioner appeals as of right a tax tribunal order denying petitioner's motion for reconsideration of an earlier order dismissing this case. We affirm.

Respondent assessed personal property owned by petitioner. Petitioner filed a petition before the Michigan Tax Tribunal alleging that respondent's assessment of the property was in excess of fifty percent of the property's true cash value. Respondent thereafter requested that petitioner produce, in relevant part, petitioner's 1994 general ledger. Petitioner did not produce the 1994 general ledger despite the entry of three orders requiring petitioner to do so. The tribunal dismissed this case as a result of petitioner's failure to comply with its orders.

This Court's review of a tax tribunal decision is limited to determining whether the tribunal made an error of law or adopted an incorrect legal principle, and whether the tribunal's findings of fact are supported by competent, material and substantial evidence. *Michigan Automotive Research Corp v Dep't of Treasury (After Remand)*, 222 Mich App 227, 230-231; ___ NW2d ___ (1997).

Petitioner first argues that the tribunal should have considered a less stringent sanction than dismissal. We find no error. The power of the tax tribunal to dismiss a petition for noncompliance with a rule or order of the Tribunal is unquestioned. *Kostyu v Dep't of Treasury*, 170 Mich App 123, 131; 427 NW2d 566 (1988); *Perry v Vernon Twp*, 158 Mich App 388, 392; 404 NW2d 755 (1987).

Next, petitioner argues that the tribunal erred in requiring production of the general ledger when the ledger did not exist separate from a computer data base which was proprietary to petitioner and

could not be given to respondent under the Federal Copyright Act. We decline to address this issue because it was not raised below. *Alford v Pollution Control Industries of America*, ___ Mich App ___, ___ NW2d ___ (Docket No. 187522, issued d 4/11/97) slip op p 4.

Finally, petitioner argues that the tribunal committed error in not allowing it to produce a trial balance, which would have contained more information than that contained in a general ledger. Petitioner also asserts that production of the ledger was a “logistical impossibility.” Petitioner further contends that it made documents available for respondent’s review, but respondent did not take the opportunity to review the documents. However, the tribunal found that the ledger existed. Our review indicates that this finding is supported by competent, material and substantial evidence. The record also indicates that petitioner never produced the ledger as ordered by the tribunal. The tribunal concluded that “Petitioner’s determination that the information sought by Respondent is contained in the documents offered for inspection is irrelevant.” We find no error in this conclusion.

Affirmed.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage