STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN PHYSICIANS MUTUAL LIABILITY COMPANY,

Plaintiff-Appellee,

v

DEPARTMENT OF TREASURY,

Defendant-Appellant.

UNPUBLISHED
March 6, 1998

No. 196460
Court of Claims
LC No. 95-015768-CM

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from a June 16, 1996 order granting summary disposition in favor of plaintiff in this case involving tax liabilities. We affirm.

This case concerns tax returns filed by plaintiff for the years 1989 through 1992. Defendant audited the tax returns for these four years and claimed that plaintiff had an unpaid tax liability of $46,674. Plaintiff did not challenge $4,243, but did challenge the remaining $41,931. The hearing referee initially assessed $41,931 against plaintiff, and a final assessment issued on February 24, 1995 was for $56,403.58, which included interest on the assessment. Plaintiff paid the assessment, but appealed the decision to the Court of Claims. Plaintiff moved for summary disposition, asking for a refund of the entire amount in dispute. Plaintiff argued that interest receipts should not have been included in the gross receipts and, therefore, should have been excluded from plaintiff's tax base. The Court of Claims concluded that the interest should not have been included in the gross receipts, and granted plaintiff's motion. The Court of Claims ordered that $41,931 plus statutory interest had to be refunded to plaintiff.

In opposing plaintiff's motion for summary disposition, defendant argued that under the Single Business Tax Act (SBTA), MCL 208.1 *et seq.;* MSA 7.558(1) *et seq.*, an insurance company's tax base is calculated on the basis of a company's gross receipts under MCL 208.22a; MSA 7.558(22a), that gross receipts include sales under MCL 208.7(3); MSA 7.558(7)(3), and that the statutory definition of sales includes performance of services constituting business activities under MCL 208.7(1);

MSA 7.558(7)(1). Defendant argued that deferment of the policyholders' obligations to make payment on the insurance policy premiums constituted business activity under MCL 208.3(2); MSA 7.558(3)(2) because they promoted the sale of plaintiff's insurance policies. The Court of Claims rejected defendant's arguments, and ruled that the interest payments charged by plaintiff did not constitute sales of goods or performance of services, and that they did not add value to the insurance policies sold by plaintiff.

On appeal, defendant contends that the Court of Claims erred in ordering the refund. Defendant argues that amounts in excess of premiums received by an insurance company from policyholders who use a deferred payment plan to pay insurance premiums constitute sales and, therefore, gross receipts subject to tax under § 22a of the SBTA. It is defendant's contention that the interest payments in this case were received in return for plaintiff's performance of services constituting business activity, and, therefore, are "sales" within the meaning of § 7(1) of the SBTA. Because sales are included in "gross receipts" pursuant to § 7(3) of the SBTA, the interest payments should be included in the adjusted tax base of insurance companies set forth in § 22a of the SBTA.

We review de novo a trial court's decision regarding a motion for summary disposition. *Kellogg Co v Dep't of Treasury,* 204 Mich App 489, 492; 516 NW2d 108 (1994). This case also requires us to interpret a statute, which likewise is reviewed de novo as a question of law. *Putkamer v Transamerica Ins Corp of America,* 454 Mich 626, 631; 563 NW2d 683 (1997).

This case is governed by § 22a. Specifically, § 22a was amended by 1996 PA 578, which now states:

> (1) Except as otherwise provided, from August 3, 1987 to September 30, 1987, for the tax year beginning October 1, 1987 and ending September 30, 1988,and each tax year thereafter, the tax base and adjusted tax base of an insurance company is the product of .25 times the insurance company's adjusted receipts as apportioned under section 62.

Section 22a defines adjusted receipts as:

> (4) As used in this section:
>
> (a) "Adjusted receipts" means, except as provided in subdivision (b), the sum of all the following:
>
> * * *
>
> (v) Charges not including interest charges attributable to premiums paid on a deferred or installment basis.

The "cardinal rule" of statutory interpretation is to give effect to the Legislature's intent. *Putkamer, supra,* p 631. Where the language of a statute is clear and unambiguous, the courts must apply the statute as written. *Id.* The statute's language is to be given its ordinary and generally

accepted meaning. *Id.* Before the 1996 amendment, the statute did not address whether an insurance company's computation of its tax base was required to include the insureds' payments of interest on deferred or installment payments of premiums. Therefore, we must determine whether the 1996 amendment is to be given retroactive application. Generally, statutes are applied prospectively unless the Legislature has expressly or impliedly indicated its intent to give retroactive effect or unless the statutes are remedial or procedural in nature. *Cipri v Bellingham Frozen Foods, Inc*, 213 Mich App 32, 37; 539 NW2d 526 (1995).

The Legislature, through the wording of the statute itself and in the legislative history, has indicated a clear intent that the statute is to be given retroactive application. The amended statute, by its own terms, applies from August 3, 1987 to September 30, 1987, and to tax years beginning October 1, 1987. See MCL 208.22a(1); MSA 7.558(22a)(1). PA 1996 578 was ordered to take immediate effect, was approved on January 16, 1997, and filed on January 17, 1997. Further, the legislative history states that "[t]he bill's provisions would be retroactive and effective beginning January 1, 1991." House Legislative Analysis, HB 5990, January 14, 1997. In a supplemental brief filed immediately before oral argument in this case, defendant conceded that the legislative history supported plaintiff's position, but only for the period beginning January 1, 1991. Thus, defendant requests that this Court determine that the amounts received by plaintiff before January 1, 1991 constituted gross receipts as that term is used in § 22a.

We cannot accept defendant's contention in this regard because a plain reading of the statute indicates that it is to apply from August 3, 1987 to September 30, 1987, and to the tax year beginning October 1, 1987 and ending September 30, 1988 and for each tax year thereafter. "When statutory language is clear and unambiguous, we must honor the legislative intent as clearly indicated in that language." *Western Michigan Univ Bd of Control v State of Michigan*, 455 Mich 531, 538; 565 NW2d 828 (1997). Although the legislative history does state that the bill's provisions are to be "effective beginning January 1, 1991," it would conflict with the clear language of the statute that from August 3, 1987 to September 30, 1987, for the tax year beginning October 1, 1987 and ending September 30, 1988, and each tax year thereafter, the tax base and adjusted tax base of an insurance company is the product of .25 times the company's adjusted receipts. "Adjusted receipts" is then defined in § 22a(4)(a).

However, to read the legislative history to give the amended statute effect only for taxes after January 1, 1991 is contrary to the language contained in the statue itself. Thus, an absurd result would produce in giving the statute retroactive effect only to taxes after January 1, 1991 where the statute states that it applies from August 3, 1987 to September 30, 1987, for the tax year beginning October 1, 1987 and ending September 30, 1988, and for each tax year thereafter.[1] Therefore, because the language of the statue is clear and unambiguous, we give effect to the language of the statute itself and any further judicial construction is neither required nor permitted. See *id.*, p 538; *Shallal v Catholic Social Services*, 455 Mich 604, 611; 566 NW2d 571 (1997).

In accord with amended § 22a, the tax base for an insurance company is to be computed using the company's adjusted receipts rather than gross receipts. Section 22a(4)(a)(v) specifically excludes interest charges attributable to premiums paid on a deferred installment basis from an insurance

company's adjusted receipts. Because the type of interest income at issue is excluded from an insurance company's adjusted receipts, the interest charges at issue cannot be included in computations of plaintiff's tax base. Accordingly, the Court of Claims did not err in granting summary disposition in favor of plaintiff.

Affirmed. No taxable costs pursuant to MCR 7.219, an issue of public policy being involved.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Hilda R. Gage

[1] Finding the amended statute to apply to the tax year beginning in 1987, rather than 1991, is in better harmony with the legislative history. Under the arguments section, it is stated that the bill would clearly specify the single business tax base of insurance companies to more nearly reflect the intent of the original legislation subjecting both domestic and foreign insurance companies to single business tax. Thus, insurance companies would be paying taxes the *1987* law intended for them to pay. See House Legislative Analysis, HB 5990, January 14, 1997, p 2.