

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF EMMET E. TRACY and ESTATE OF
FRANCIS A. TRACY,

UNPUBLISHED
August 18, 1998

Plaintiffs-Appellees,

v

No. 200715
Michigan Tax Tribunal
LC No. 00220486

DEPARTMENT OF TREASURY,

Defendant-Appellant.

Before: McDonald, P.J., and O'Connell and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment issued by the Michigan Tax Tribunal canceling plaintiffs' assessments for the tax years of 1985, 1986, and 1988 of a \$450 penalty and \$14,433 pursuant to the Michigan Intangibles Tax Act (ITA), MCL 205.131 *et seq.*; MSA 7.556(1) *et seq.* The Department of Treasury determined that Emmet Tracy's "deferred compensation," as president of Alma Piston Company from 1976 to 1988, constituted intangible personal property subject to taxation under the ITA. However, the Tax Tribunal found that this "deferred compensation" was not an "account receivable," "other obligation for payment of money" or "other credit and evidence of indebtedness" under MCL 205.131(b); MSA 7.556(1)(b) or as defined by agency rule 1979 AC, R 205.224(4), and that it was therefore not intangible personal property subject to taxation under the ITA. We affirm.

This Court limits its review of a Tax Tribunal determination to whether the tribunal made an error of law or applied a wrong principle. *Rose Hill Center v Holly Twp*, 224 Mich App 28, 31; 568 NW2d 332 (1997). This Court generally defers to the Tax Tribunal's interpretation of a statute that it is delegated to administer. *Id.*

The ITA provides for the imposition and collection of a specific tax on the privilege of ownership of intangible personal property and defines "intangible personal property" as follows:

(b) "Intangible personal property" means *moneys on hand or on deposit or in transit, shares of stock, and other units of interest, in corporations, joint stock*

companies, and other associations conducted for profit, not, however, including the interest of a partner under a partnership agreement; securities which constitute a part of an issue of similar securities, such as bonds, certificates of indebtedness, debentures, notes, and certificates of deposit therefor; annuities; *accounts and notes receivable*, land contracts receivable, real estate and chattel mortgages receivable, conditional sale contracts receivable, *and other obligations for the payment of money*; equitable interest in any of the foregoing classes of intangible personal property, including interest of beneficiaries under trust whether created inter vivos or by will; *and any and all other credits and evidences of indebtedness whether secured or unsecured*. [MCL 205.131(b); MSA 7.556(1)(b) (emphasis added).]

The Tax Tribunal canceled the assessments on the deferred compensation, reasoning that the deferred compensation was not an “account receivable or the like” because it was income earned by Emmet Tracy as salary or wages and did not fit the definition of an “account receivable.” The Tax Tribunal referred to the definition of “account receivable” contained in Black’s Law Dictionary: “a debt, owed to an enterprise, that arises in the normal course of business dealings and is not supported by negotiable paper.” Black’s Law Dictionary (6th ed.) Defendant argues the Tax Tribunal’s reliance on Black’s Law Dictionary was improper because there is a Department of Treasury regulation that defines “account receivable” in the context of the ITA. This regulation provides:

- (1) An account receivable is an obligation owing to a person on open account.
- (2) Accounts receivable representing obligations of the United States government, state of Michigan or its political subdivisions are taxable to the person to whom the obligation is due on the same basis as any other account receivable.
- (3) In the case of maturity of an insurance policy, or the death of the insured, when the proceeds are not converted into periodic payments and taxable as an annuity under the act, but the funds are left on deposit with the company, such funds will be considered to be a taxable account receivable.
- (4) Credits, due bills, deposits with credit unions or deposits with persons, firms or corporations other than banks shall be considered as accounts receivable unless they represent capital investments.
- (5) Moneys on deposit in a bank in either a savings or commercial account shall not be considered as accounts receivable. [1979 AC, R 205.224.]

This regulation explicitly states in subsection (1) that “an account receivable is an obligation owing to a person on open account.” This is the only subsection that might apply to the situation presented in this case. Neither the Legislature nor the Department of Treasury has specifically defined “open account” and therefore this Court assumes the department intended to use its common meaning. When the Legislature fails to define a word used in a statute, then its ordinary meaning applies, which may be

ascertained by reference to a dictionary. *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 469-470; 521 NW2d 831 (1994). An “open account” has been defined as:

An unpaid or unsettled account; an account with a balance which has not been ascertained, which is kept open in anticipation of further transactions; type of credit extended by a seller to buyer which permits buyer to make purchases without a note or security and it is based on an evaluation of the buyer’s credit. [Black’s Law Dictionary (6th ed.)]

The relationship between Emmet Tracy and Alma Piston Company was not that of a seller and buyer but rather one in which an employer was paying an employee a salary. Thus, even though the Tax Tribunal should have addressed the department’s regulation defining “accounts receivable,” its ultimate reasoning was sound because it distinguished between a debt that arises in the normal course of business and compensation that is incurred for employment services. The same distinction is implied by the regulation, which does not appear to envision coverage of an employer-employee relationship. Therefore, we conclude that employment compensation does not fall within the scope of the definition of an “account receivable.”

This conclusion is supported by application of the rule of statutory interpretation, *ejusdem generis*, which provides that where a statute contains general words following a designation of particular subjects, the meaning of the general words is presumed to be restricted by the particular designation as including things of a similar kind, class, character, or nature as those specifically enumerated. *Welch Foods, Inc v Attorney General*, 213 Mich App 459, 464; 540 NW2d 693 (1995). The entire statutory clause which includes “other obligations for the payment of money” is “accounts and notes receivable, land contracts receivable, real estate and chattel mortgages receivable, conditional sale contracts receivable, and other obligations for the payment of money.” MCL 205.131(b); MSA 7.556(1)(b). These receivables all have one point in common. All deal with a buyer-seller relationship or a form of commercial transaction. An employer compensating an employee for services rendered does not belong to this category of transactions. Similarly, the language “and any and all other credits and evidences of indebtedness whether secured or unsecured,” which appears to be a catch-all phrase, is restricted by the type of transactions and interests addressed in the section. We conclude that deferred employment compensation does not fit any category defined by reference to equity securities, bonds, notes receivable, accounts receivable, annuities, or equitable interests in trusts. Because the state’s authority to impose a tax must be expressly authorized by law and not be inferred, see *Michigan Bell v Dep’t of Treasury*, 445 Mich 470, 477; 518 NW2d 808 (1994), we refuse to expand the intended scope of the ITA. Accordingly, we affirm the Tax Tribunal’s cancellation of the assessments. In light of this disposition, we need not address defendant’s remaining issue.

Affirmed.

/s/ Gary R. McDonald
/s/ Peter D. O’Connell
/s/ Michael R. Smolenski