

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WARD LAKE DRILLING,

Petitioner-Appellee/Cross-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant/Cross-  
Appellee.

UNPUBLISHED

January 29, 1999

No. 203869

Michigan Tax Tribunal

LC No. 00231337

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Before: Saad, P.J., and Kelly and Bandstra, JJ.

PER CURIAM.

Respondent Michigan Department of Treasury appeals as of right the judgment in favor of petitioner Ward Lake Drilling entered on May 16, 1997 by the Michigan Tax Tribunal, granting petitioner a Single Business Tax (SBT) refund of \$90,404 for its 1991 to 1993 fiscal years. Petitioner's claim stemmed from respondent's denial of refunds after petitioner amended its SBT returns to exclude sums attributable to oil and gas interests, for which a Michigan severance tax had been paid. Petitioner also sought damages, including attorney fees, pursuant to MCL 205.7; MSA 7.657. The tribunal granted petitioner's claim for a refund but denied the claim for damages and fees. Petitioner filed a cross-appeal and now challenges this denial. We affirm in part and remand for further factual determinations as to damages and attorney fees.

During 1991, 1992 and 1993, petitioner filed its original SBT returns with respondent. Since petitioner's activities consisted of severing oil and natural gas from the soil, petitioner also paid taxes pursuant to the Severance Tax Act (STA), 1929 PA 48, as amended, MCL 205.301 *et seq.*; MSA 7.351 *et seq.* On or about November 21, 1995, petitioner filed amended SBT returns seeking a refund of \$90,404. The amended returns in effect removed from the tax computation the portion of federal taxable income attributable to oil and natural gas interests for which Michigan severance tax had been paid. On November 30, 1995, respondent denied petitioner's claim for a refund as represented by the amended SBT returns. On December 29, 1995, petitioner filed an appeal with the Michigan Tax Tribunal. Pursuant to MCL 205.22; MSA 7.657(22), the tribunal had jurisdiction to hear petitioner's appeal. In lieu of a formal hearing, the parties submitted their briefs along with stipulated facts to the

tribunal. On May 16, 1997, the tribunal issued an order and opinion in which petitioner was awarded the SBT refund. The tribunal denied petitioner's claim for damages and attorney fees.

Respondent first claims the tribunal erred when it decided that payment of severance taxes exempted revenue derived from oil and natural gas activities from the single business tax. We disagree. Absent fraud, this Court limits its review of decisions of the tribunal to whether it erred as a matter of law or adopted a wrong principle. *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 482-483; 473 NW2d 636 (1991).

At the heart of this controversy is whether section 15 of the STA clearly and unambiguously reflects the intent of the Legislature regarding the taxation of revenue derived from oil and gas activities. Section 15 of the Act, MCL 205.315; MSA 7.365, states:

The severance tax herein provided for shall be in lieu of all other taxes, state or local, upon the oil or gas, the property rights attached thereto or inherent therein, or the values created thereby; upon all leases or the rights to develop and operate any lands of this state for oil or gas, the values created thereby and the property rights attached to or inherent therein: Provided, however, Nothing herein contained shall in anywise exempt the machinery, appliances, pipe lines, tanks and other equipment used in the development or operation of said leases, or used to transmit or transport the said oil or gas: And provided further, That nothing herein contained shall in anywise relieve any corporation or association from the payment of any franchise or privilege taxes required by the provisions of the state corporation laws.

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). Once the intent of the Legislature is discovered, it must prevail regardless of any conflicting rule of statutory construction. *Terzano v Wayne County*, 216 Mich App 522, 527; 549 NW2d 606 (1996).

In *Bauer v Dep't of Treasury*, 203 Mich App 97; 512 NW2d 42 (1993)<sup>1</sup>, a panel of this Court determined section 15 of the STA to be clear and unambiguous. More specifically, the Court interpreted the portion of section 15 which is in the figurative tempest of this appeal. The relevant portion of the section, as quoted by the Court, reads:

The severance tax herein provided for shall be in lieu of all other taxes, state or local, upon . . . the values created . . . [Bauer, *supra*, 203 Mich at 100.]

The Court went on to state that the statute can only mean what it says and, therefore, the royalty income at issue was not subject to personal income tax. *Id.* at 100-101. In *Cowen v Dep't of Treasury*, 204 Mich App 428; 516 NW2d 511 (1994), this Court applied the *Bauer* decision to a fact pattern all but identical to the present case. In *Cowen*, the petitioner appealed the decision of the Michigan Tax Tribunal whereby the tribunal held that the exemption in the STA did not apply to SBT payments. The Court stated in relevant part:

The *Bauer* panel . . . found the statement [in section 15] to be clear and unambiguous. In order to follow the plain meaning of the phrase “in lieu of all other taxes,” the Court concluded that § 15 exempted the petitioners from paying income tax on their royalty interests.

Pursuant to Administrative Order No. 1990-6 as extended, we are constrained to follow the *Bauer* interpretation of § 15 that the severance tax is in lieu of all other taxes. [*Id.* at 433.]

In light of this Court’s decisions in *Bauer, supra* and *Cowen, supra*, this panel is obligated to apply their relevant holdings to the instant case. MCR 7.215(H). Therefore, we conclude the tribunal acted properly in finding that MCL 205.315; MSA 7.365 exempts revenue subject to severance taxes from single business taxes.

Respondent next claims MCL 205.315; MSA 7.365 does not relieve a corporation from payment of privilege taxes such as the SBT. We disagree. The following language of MCL 205.315; MSA 7.365 is in dispute:

And provided further, that nothing herein contained shall in anywise relieve any corporation or association from the payment of any franchise or privilege taxes required by the provisions of the state corporation laws.

Although the SBT is a privilege tax, *Trinovia Corp v Dep’t of Treasury*, 433 Mich 141, 149 (1989), aff’d 498 US 358; 111 S Ct 818; 112 L Ed2d 884 (1991), it is not required by the Business Corporation Act. MCL 450.1101 *et seq.*; MSA 21.200(101) *et seq.* The franchise and privilege taxes required by the Business Corporation Act are paid by a corporation or association at the time of filing its articles as an organization fee and for the privilege of doing business within the state. MCL 450.2062; MSA 21.200(1962). Therefore, MCL 205.315; MSA 7.365 does not apply to the single business tax but only to those taxes specifically required by the Business Corporation Act.

Finally, on cross-appeal, petitioner claims the tribunal erred in declining to award it damages and attorney fees pursuant to MCL 205.7; MSA 7.657(7). Since the award of damages under MCL 205.7; MSA 7.657(7) is discretionary, we review the tribunal’s decision not to award damages and attorney fees for an abuse of discretion. *Phinney v Perlmutter*, 222 Mich App 513, 560; 564 NW2d 532 (1997).

Under MCL 205.735; MSA 7.650(35), the tribunal’s jurisdiction extends to appeals from assessments, decisions or orders of the Michigan Department of Treasury, MCL 205.22; MSA 7.657(22), and a petitioner may invoke the jurisdiction of the tribunal to review a departmental decision, ruling, determination or order. MCL 205.735(2); MSA 7.650(35)(2). Once the tribunal acquired jurisdiction over the instant case, MCL 205.22; MSA 7.657(22), it also had jurisdiction under MCL 205.732(c); MSA 7.650(32)(c) to require respondent to pay petitioner damages and costs pursuant to MCL 205.7; MSA 7.657(7). In reaching its conclusion, the tribunal shall make brief, definite, and pertinent findings and conclusions on the contested matters. MCR 2.517.

The facts of the instant case closely mirror those of *Cowen, supra*. Respondent unconvincingly argues that current precedent does not apply to corporate tax payers. However, an argument could be made that this Court's previous decisions in *Bauer, supra* and *Cowen, supra* are somewhat confusing. This could be the reason why the tribunal denied petitioner's request for damages and attorney fees. However, the tribunal did not specify the factual basis behind its decision. In light of the similarity between the instant case and prior precedent, we believe the tribunal should have articulated the basis for denying petitioner's request for damages and attorney fees. MCR 2.517. We remand this case to the tribunal for reconsideration of petitioner's request for damages and attorney fees. If it declines to award damages and/or attorney fees it shall state its reasons.

Affirmed in part and remanded for further proceedings in accordance with this opinion. We retain jurisdiction.

/s/ Henry William Saad

/s/ Michael J. Kelly

/s/ Richard A. Bandstra

<sup>1</sup> At issue in *Bauer* was the inclusion of royalty income from oil and gas activities in personal taxable income when the same royalties were already subject to severance taxes.